

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74- 1162

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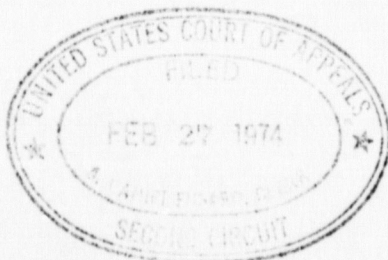
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1162

X-----X:
:
: ARCHIE PELTZMAN, :
:
: PLAINTIFF, APPELLANT :
:
: -against - :
:
: CENTRAL GULF S.S. CO. :
:
: DEFENDANT, APPELLE :
X-----X

JOINT APPENDIX

ARCHIE PELTZMAN, PRO +SE
3725 16th Avenue
Bklyn, 11214, N.Y.C.
256-4658



PAGINATION AS IN ORIGINAL COPY

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A1

ARCHIE FELTZMAN, VS. CENTRAL GULF STEAMSHIP CO.

JUDGE KNAPP

73 CIV. 2911

DATE	PROCEEDINGS	Date Filed
JUL 12-73	Filed Complaint. Issued Summons.	
JUL 30-73	Filed summons with marshals return: Served; Central Gulf S.S. Co. on 7-20-73.	
AUG 8-73	Filed plttf's amendments to complaint.	
AUG 9-73	Filed verified ANSWER to complaint.	LFG
AUG 16-73	Filed plttf's notice of motion to strike answer of deft. (Memorandum of law included.)	
AUG 16-73	Filed Amended complaint.	
AUG 20-73	Filed deft Central Gulf Lines, Inc's ANSWER to the amended complaint.	
SEP 12-73	Filed affidavit by J.A. Flynn in opposition to motion to strike.	
SEP 19-73	Filed reply affidavit & pleading RE: N.L.R.B. motion to quash, subpoena.	
SEP 24-73	Filed plttf's affidavit & notice of motion to permit inspection & copying of papers ret. 10-12-73.	
SEPT 10-73	Filed affidavit of J.A. Flynn in opposition to plttf's motion.	
NOV 26-73	Filed plttf's Pro-Se affidavit & notice of motion to compel discovery, ret. 12-11-73.	
NOV 27-73	Filed deft's affidavit & notice of motion for summary judgment ret. 1-25-74.	
NOV 27-73	Filed deft's statement pursuant to rule 9(g).	
DEC 18-73	Filed affidavit of service by Richard P. Lerner.	
DEC 18-73	Filed deft's memorandum in support of motion for summary judgment.	
DEC 18-73	Filed plttf's Pro Se cross-motion for partial summary judgment., Pleadings in opposition to motion for summary judgment (Memorandum, of law included.)	
JAN 11-74	Filed OPINION #30206: Deft. moves for summary judgment, In view of court's disposition of this motion, it is not necessary to rule, on plttf's prior motions for discovery nor on the motion by the, NLRB to quash a subpoena. All now are moot. The complaint, is accordingly dismissed. So ordered. Knapp, J. m/n	
JAN 15-74	Filed Judgment: Ordered that deft. Central Gulf (Sued as Central, Gulf Steamship Co.) have judgment against the plttf. dismissing, the complaint. Judgment Ent. Clerk. m/n Ent. 1-15-74.	
JAN 23-74	Filed plttf's notice of appeal to the USCA from final judgment ent. 1-15-74 by Judge Knapp. Mailed copy to Lorenz, Finn, Giardino & Lambos.	
1-31-74	Filed letter from LORENZ, FINN, GIARDINO & LAMBOS to JUDGE Knapp dated 12-4-73	
1-31-74	Filed letter from Lorenz, Finn, Giardino & Lambos to Judge Knapp dated 12-6-74	
1-31-74	Filed letter from National Labor Relations Bd to Judge Knapp dated Sept 12, 73 with NOTICE OF MOTION TO QUASH SUBPOENA TO TESTIFY IN PRODUCTION	

B

A 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ARCHIE PELTZMAN,

Plaintiff,

- against -

CENTRAL GULF LINES, INC. (sued
herein as "CENTRAL GULF STEAMSHIP
CO."),

Defendant.
-----x

#40206
OPINION

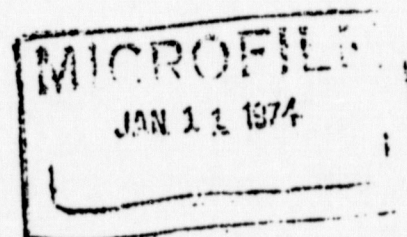
73 Civ. 2911
Pro Se

FILED
JAN 11 1 44 PM '74
S.D.N.Y.

A P P E A R A N C E S :

ARCHIE PELTZMAN,
Plaintiff Pro Se
8725 16th Avenue
Brooklyn, New York 11214

LORENZ, FINN, GIARDINO & LAMBOS
Attorneys for Defendant
21 West Street
New York, New York 10006



KNAPP, D.J.

This is an action brought pro se by a maritime radio operator for damages and injunctive relief based on defendant's refusal to rehire him. The refusal was based on the requirements of the union security clause of the collective bargaining agreement between defendant and the American Radio Association, to which association plaintiff used to belong until he was expelled for non-payment of dues.

Defendant moves for summary judgment on the following

grounds:

1. According to Motor Coach Employees v. Lockridge (1971) 403 U.S. 274 and other decisions, the National Labor Relations Board has exclusive jurisdiction over plaintiff's claim, because defendant arguably committed an unfair labor practice in refusing to rehire plaintiff, which is the standard for exclusivity.
2. The doctrine of collateral estoppel requires dismissal for lack of subject-matter jurisdiction in that an action brought by this plaintiff in the New York State courts for the identical grievance against the ARA was dismissed for want of jurisdiction on the ground of preemption by the NLRB. Peltzman v. ARA (Sup. Ct. Special Term, N.Y. County 1971) 69 Misc. 2d 17, 327 N.Y.S. 2d 505, aff'd. 335 N.Y.S. 2d 998.

3. The National Labor Relations Board upon investigation into plaintiff's grievance refused to issue a complaint against defendant on the ground that "The evidence establishes that the Company refused to re-hire [you] . . . pursuant to a valid Union security provision between it and the [ARA] because of your failure to remit initiation fees after notification by the latter that such fees were due and not for any reason prohibited by the aforesaid [NLRA]." Appendix A to defendant's supporting Memorandum of Law.
4. On the merits, defendant's refusal to rehire plaintiff was lawful under the circumstances.
5. Plaintiff has not exhausted internal Union grievance procedures.

Defendant's motion is granted on all grounds save the last, as to which the Court believes there are material issues of fact in dispute. As to the other four grounds, only the third is in any way troublesome. See e.g. 2 K. Davis, Administrative Law Treatise §18.06, stating that a refusal by the NLRB to issue a complaint is not a final decision on the merits. However, given that in the instant case the NLRB has exclusive jurisdiction, we need not decide the impact of its prior actions. Plaintiff apparently concedes that

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his discharge flowed a fortiori from the Union security clause, but asserts that that clause is illegal and unenforceable. However, the authorities cited by plaintiff in support of that assertion are uniformly inapplicable. In Edwards v. S.O.G.A.T. (C.A. 1968), a British case relied on by plaintiff for example, Lord Denning does not challenge the validity of the closed shop per se but only the arbitrariness and unfettered discretion sometimes abused by the trade unions operating as closed shops. Thus the court held invalid a blanket rule requiring the automatic termination of temporary membership after six weeks of arrears, without any opportunity for the temporary member to be heard. By any version of the facts in the case at bar, no such question is here presented.

Similarly 46 U.S.C. §594 has no application to the situation.


In view of the Court's disposition of this motion, it is not necessary to rule on plaintiff's prior motions for discovery nor on the motion by the NLRB to quash a subpoena. All now are moot.

The complaint is accordingly dismissed.

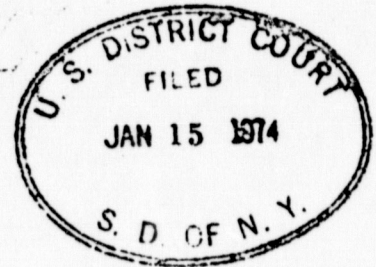
SO ORDERED.

Dated: New York, New York

January 7, 1974.


WHITMAN KNAPP, U.S.D.J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

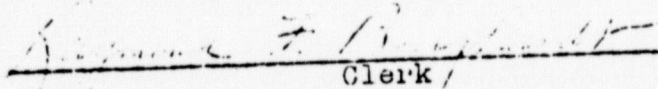
----- X
ARCHIE PELTZMAN, : Pro-Se
Plaintiff, : .73 Civil 2911(WK)
-against- : JUDGMENT
CENTRAL GULF LINES, INC. (SUED HEREIN :
AS "CENTRAL GULF STEAMSHIP CO."), :
Defendant. :
----- X

Defendant having moved the Court to dismiss the complaint on various grounds, and the said motion having come on to be heard before the Honorable Whitman Knapp, United States District Judge, and the Court thereafter on January 11, 1974, having handed down its opinion dismissing the complaint, it is,

ORDERED, ADJUDGED AND DECREED, that defendant, CENTRAL GULF LINES, INC. -(SUED HEREIN AS "CENTRAL GULF STEAMSHIP CO."), have judgment against the plaintiff, ARCHIE PELTZMAN, dismissing the complaint.

Dated: New York, N. Y.

January 15, 1974


Clerk/

A 7

Notice of Appeal
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ.2911

ARCHIE PELTZMAN,

Plaintiff,

against

CENTRAL GULF LINES INC.(SUED HEREIN AS CENTRAL GULF STEAMSHIP CO.)
Defendant,

Notice is hereby given that Archie Peltzman, the plaintiff above named hereby appeals to the United States Court of Appeals for the Second Cir cuit from the final judgment entered by the Honorable Whitman Knapp, Unite States Bistrict Judge, dated January 15, 1974, and entered January 15, 1974 that defendant Central Gulf Lines have judgment against the plaintiff dismissing the complaint.

Dated: New York, New York
January 23, 1974

ARCHIE PELTZMAN
Plaintiff, ProoSe
8725 16th Ave.
Bklyn, N.Y. 11214
256 - 4658

To: Lorenz, Finn, Giardino, & Lambos
Attorneys for Defendant
21 West St
New York, 10006
943-2470

Clerk, United States Dstrict Court
Southern District of New York
Foley Square, New York, 10007

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

A. 8

ARCHIE PELTZMAN,
PLAINTIFF

-against-

CENTRAL GULF STEAMSHIP CO.
DEFENDANT

X

"

"

" CIVIL ACTION 73-2911

"

" AMENDED COMPLAINT

"

"

"

X

AMENDED COMPLAINT IN PERSONAM FOR WRONGFUL DISCHARGE,
FOR DECLARATORY JUDGMENT, AND INJUNCTIVE RELIEF.

Plaintiff in person complaining of the defendant, respectfully alleges:

1. The Court has jurisdiction of this action under the Maritime Law Title 46- Shipping, Chapter 18-Merchant Seaman, Sec 594, and under 28 U.S.C. 1331, 1333, 1337, 2201. Also by reason that it is predicated upon diversity of citizenship, and upon a maritime tort, and is an action for an amount in excess of 10,000 dollars exclusive of interest and costs.

2. That upon information and belief defendant is a foreign corporation duly organized and existing under and by virtue of the laws of the State of Delaware, engaged in the shipping business with an office for the transaction of business in the borough of Manhattan, City and County and State of New York. Defendant's principal place of business is not within the State of New York, but located in New Orleans, Louisiana.

3. Archie Peltzman plaintiff in person complaining of defendants is a resident of Brooklyn, New York City, and a citizen of the United States.

4. This complaint is brought pursuant to the provisions of 28 U.S.C. Sec. 1916, permitting seaman to file suit without prepayment of costs, and this action is an admiralty and maritime claim within the meaning of Rule 9 h, for damages based on an allegedly wrongful discharge, and failure by the defendant to permit plaintiff to reship.

4 (a). That the wrongful discharge and failure to allow plaintiff to reship caused him mental distress and financial losses of approximately \$1300 monthly, plus other financial losses of approximately \$1300 monthly of vacation, pension, and health insurance benefits, and these losses are still continuing up to the present time.

5. That at all times hereinafter mentioned the defendant operated and controlled the S/S Green Ridge, a merchant vessel sailing under United States registry.

6. That the plaintiff had a permanent assignment as a Radio Officer aboard the S/S Green Ridge, commencing on August 6, 1970, and made three foreign voyages totaling nine months, signing articles for each voyage in the capacity and at the wages listed in the articles, which will be introduced into evidence at the time of trial; and that the plaintiff performed his duties aboard the said vessel in accordance with the articles, and with the approval of the Master of the vessel, until May 28, 1971.

7. That on May 28, 1971, plaintiff asked the defendant for a vacation of one trip off, which he was entitled to under the union contract which the defendant and plaintiff's union the American Radio Association had signed, and the defendant instead of giving him a letter containing a leave of absence for one trip off as the plaintiff had requested, handed him the following letter, Quote. Dear Mr. Peltzman,

In accordance with your request I have ordered a replacement. Please be asvised that you will not be able to rejoin the vessel without proper clearance from the union.

Yours truly,

W.C. Kenopke
Master S/S Green Ridge

A.10

8. That the plaintiff was not rehired when the S/S Green Ridge returned from a voyage on or about September 10, 1971, because the company informed plaintiff that the union had sent to the ship a permanent replacement for the plaintiff, and the union contract prevented them from hiring anyone not sent to them from the union hiring hall.

9. That the plaintiff was wrongfully discharged as of September 10, 1971, without cause under the maritime law, and under the union contract which precludes the dismissal of plaintiff without a hearing, or arbitration under the contract in effect between the union and company, and such contract was made for the benefit of the plaintiff as a third party beneficiary. No hearing and no arbitration was ever held prior to dismissal.

10. That the controversy as to the plaintiff's membership or non-membership in the union was a labor dispute, and had no relevance whatsoever as to the plaintiff's right to continue his work aboard the S/S Green Ridge, since his assignment was a permanent one, he was entitled to a vacation, and since the maritime law precludes the discharge of a seaman unless there is **proof** of persistent and incorrigible disobedience on the part of a seaman in relation to his ship, and captain's orders.

11. That plaintiff since his discharge from the S/S Green Ridge has not worked in the maritime industry due to the fact that this industry is a closed shop, and unless a seaman has a clearance assignment to a vessel, he can not be hired, or rehired after a vacation without such clearance from the union.

12. Plaintiff alleges and believes that under maritime law, the United States Constitution, the New York State Constitution, he has a right to work and pursue a lawful occupation without being discharged because of a labor controversy, or a contract which provides for membership or non-membership in a labor union as a condition of employment.

A.11

13. That by reason of the defendant's action in discharging plaintiff, he has been deprived of his property rights to a permanent job aboard the S/S Green Ridge, and has lost wages in the sum of \$1031.13 monthly, plus overtime pay, vacation pay, and pension and health payments to the benefit of the plaintiff, according to the contract between the union and the company, which was for the benefit of the plaintiff as a third party beneficiary, to the present time, or till such time as the S/S Green Ridge was sold or laid up. Plaintiff has no knowledge as to the continued ownership of the vessel.

14. No previous application for the relief herein requested has been made, and plaintiff has no adequate remedy at law.

15. Wherefore plaintiff respectfully prays,

(a) that defendant herein be required to answer this bill of complaint.

(a) (1) That plaintiff be compensated for the financial losses suffered by his wrongful discharge, and that punitive damages be added for the benefit of plaintiff, in accordance with the maritime law, and such other federal or state laws which protect the individual from coercive, illegal, arbitrary, discriminatory, and bad faith acts of employers.

(b) that pending the trial of this cause plaintiff be reinstated to his job if the vessel is still operating under the control of the company.

(c) demands judgment declaring that plaintiff was wrongfully discharged contrary to the maritime law.

(d) declaring that the grounds of defendant's reasons for discharging plaintiff unless based on the maritime law, were illegal, unconstitutional, and void as applied to the plaintiff.

(e) directing such other, further and different relief as may be just and proper in the premises.

August 16, 1973

Archie Peltzman
plaintiff Archie Peltzman pro se
8725 16th Avenue

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.12

-----X
ARCHIE PELTZMAN,

Plaintiff,

-against-

CENTRAL GULF LINES, INC.

Defendant.
-----X

"
" MOTION TO STRIKE

73 Civ.2911
"

Plaintiff, Archie Peltzman pro se, moves this Court under Rule 12 (f), to strike defenses in verified answer of defendant, and alleges as follows:

1. Rebutting defendant's denials in para.1 of verified answer, argues that for purposes of a motion to dismiss, Court must consider allegations of the complaint as true; in other words, plaintiff's allegations are treated as admitted or as not genuinely in issue.

2. Rebutting defendant's denials in para.2 of verified answer, plaintiff repeats, realleges & reiterates argument used in para 1 of this pleading.

3. Rebutting defendant's lack of knowledge of plaintiff's residence and citizenship, in para.3 of verified answer, plaintiff argues that the maritime law prevents anyone not a citizen from holding the position of Radio Officer aboard ship, and that the articles plaintiff signed will show his residence. Those articles are in defendant's possession.

4. Rebutting defendant's denials in para.4 of verified answer that plaintiff did not have a permanent assignment aboard the S/S Green Ridge, and that he served aboard with the approval of the Master in performing his duties, plaintiff will produce at an early date in this action the official assignment slip from the union showing it was a permanent one and will produce the plaintiff's Radio License with the endorsement of the Captain on the back showing a satisfactory rating. Also the length of the three voyages can be ascertained from the articles, which are in defendant's possession.

5. Rebutting defendant's denials in para.5 of verified answer, plaintiff repeats, realleges, and reiterates argument used in para.1 of this pleading. Re defendant's assertion that no grievance was filed by plaintiff, plaintiff will produce at trial copy of

telegram sent to defendant after notice of refusal to reship plaintiff that he was holding company legally responsible for thier actions. Also plaintiff asserts that from previous efforts to get arbitration from the Maritime Service Committee, and from the union, he knew it was futile, and so he complained to the N.L.R.B. and sued the union in New York Supreme Court. Those efforts were not successful, even though the contract called for arbitration and hearing for settling disputes with employees.

6. Rebutting defendant's in para.6 of verified answer, plaintiff repeats, realleges, and reiterates argument used in para I of this pleading.

7. Rebutting defendant's denials in para.7 of verified answer, plaintiff repeats, realleges and reiterates argument used in para. I of this pleading.

8. Rebutting defendant's first affirmative defense in para.9 of verified answer, that the National Labor Relations Board has exclusive jurisdiction of the instant subject matter thereby preempting this Court from further action, plaintiff argues that in Ruzicka v General Motors Corporation, 336 F Supp 824 (1972) it was held that refusal of regional director of the National Labor Relations Board to issue a complaint against union on basis of charges brought by union member, which refusal was affirmed by the general counsel of the N.L.R.B. did not constitute res judicata and did not collaterally estop union member from proceeding in court against union on theory of breach of union's duty of fair representation.

In Local Union No. 59 of the Sheet Metal Workers International Association, v J.E. Workman, and A.&H Metals Inc, 343 F Supp 480 (1972), it was held although union failed to appeal to the General Counsel of the N.L.R.B. from adverse decision of regional director who refused to issue a complaint, union's action against employers for violation of labor contract would not be dismissed under preemption doctrine on ground that union had failed to exhaust administrative remedy..

9. Rebutting defendant's second affirmative defense in para - graphs IO - I5, plaintiff repeats his arguments in para.8 of this pleading.

IO. Rebutting defendant's third affirmative defense in para - graphs I6-20 of verified answer plaintiff repeats his argument in para.5 of this pleading.

A14

II. Rebutting defendant's fourth affirmative defense in paragraphs 21-22, Plaintiff argues that the law suit against the union, Peltzman v American Radio Association, 327 NYS 2d 505 (1972), whatever its holding, could not be res judicata as against the defendant, since they were not joined in that suit. The actual holding was that the suit was dismissed for lack of jurisdiction, and this does not mean that the merits of the case was decided.

I2. Rebutting defendant's fifth affirmative defense in paragraphs 23-24 of verified answer, plaintiff repeats, realleges and reiterates his pleadings in paragraphs I-II, and requests the Court to strike from the answer all of the defendant's affirmative defenses since they are insufficient, immaterial and have no basis in the maritime law or in equity. Also, the defendant's have admitted the allegations in plaintiff's complaint, paragraphs 7 & 8, by not denying that plaintiff was entitled to a trip off for a vacation, and that plaintiff was not rehired after his vacation, thereby in effect discharging him without cause, and the only justification for the dismissal is that plaintiff was unable to get a "clearance" assignment from the union to reship. Plaintiff has attached to this motion a memorandum of law, supporting his pleadings.

Wherefore, plaintiff demands that the defenses in defendant's verified answer be stricken, and that the Court order the defendant to make further answer thereto, or make such other order in the cause as it shall deem most fit to promote justice.

Dated New York, N.Y.

August 16, 1973

Yours, etc.

** Archie Peltzman*

Plaintiff pro se

8725 I6th ave,

Bklyn, NYC 11214

256-4658

MEMORANDUM OF LAW

The following cases show the relation of the seaman towards his ship under the contracts between the shipping co's and the union, in their collective bargaining agreements, and Maritime Law.

1. *Patterson v Bark Eudora* (190 US 169)-Cited by Justice Brandeis in a dissenting opinion in *Adams v Tanner* 344 US 616, as a precedent for the protection of the applicant for a job, the Act of Congress, Dec. 21, 1898, 30 Stat. 755, 763, which provides among other things:

"If any person shall demand or receive, either directly or indirectly, from any seamen or other person seeking employment as a seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than a hundred dollars."

2. *Leopold Berman et al, v N.M.U. and various shipping Co's*, 166 F Supp, 327,-The Court decided it had jurisdiction on complaint of seamen who said they were being discriminated by Union, and Shipping Co's. Judge Bicks made a settlement and plaintiff's were restored to Union and Counsel's fees of petitioner's, \$10,000 was paid by Union and shipping co's. Action arose under Labor Management Relation Act 29 U.S.C. Sec 141 et seq. The Court had jurisdiction by virtue of 28 U.S.C. 1337. Steamship Co's claimed N.L.R.B. had jurisdiction but Judge Bicks ruled otherwise.

3. *Mahoney v Sailor's Union of Pacific*, 275 P.2d 440.-Reinstatement ordered because of denial of property rights of union member without due process of law. Also held that NLRB did not have exclusive jurisdiction of case and state court had power to reinstate Mahoney.

4. In *National Labor Relations Board v Waterman SS Co*, 309 US 206, 218, and *South Atlantic SS Co v National Labor Relations Board*, 116 F 2d 480, cert den In 313 US 582, it was held,

Seamens tenure and relationship are not terminated by the mere expiration of articles.

5. *Southern SS Co v NLRB*, 316 US 31, 62 :

Formal signing off of shipping articles on termination of voyage was not conclusive on question whether seaman had been discharged on the ships return to home port, but tenure of their employment was required to be determined in the light of all the evidence concerning the employers employment customs and practices.

A16.

6. In Vitco v Jonich, 130 F Supp 945 affmd 234 F2d 161, - "Period of employment" historically meant to the end of voyage, but now includes full wages throughout the period of employment, whether employment is for a voyage or for a definite time.

7. In Radio Officers Union of the Commercial Telegraphers Union A.F.L. v National Labor Relations Board, 347 US 17, the provisions of the National Labor Relations Act by which it is an unfair practice for an employer to discriminate against employees to encourage or discourage membership in any labor organization, 29 U.S.C. Sec 158 (b) 92), and 29 U.S.C. Sec 158 (a)(3), or for a union to cause an employer to practise such discrimination, were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members or abstain from joining any union without imperiling their livelihood.

8. In Peninsular & O. SS Co v National Labor Relations Board, 98 F 2d 411, and in Texas Co v N.L.R.B., 120 F 2d 186, it was held

The Maritime Law, when in conflict with the National Labor Relations Act, is supreme.

9. In Brown v National Union of Marine Cooks and Stewards, reported in Court decisions - N.L.R.B. Vol viii, p 1070, 104 F Supp, 685

The NLRB regional director instituted an action for injunctive relief under Sec 10 (j) of the Labor Management Relations Act 1947. As a result men who were screened off by the Coast Guard and other seaman who had optioned to join a rival union were reinstated to their jobs, notwithstanding the union's refusal to give these men assignments to these jobs. Answering the defense of the employer that the contract provision obligated them to accept only men assigned to them by the union, Judge Lemmon decided that the employer may not take shelter under the contract if there be a showing of unfair practice, since it is the statute and not the contract which is the measure of duty, and the liability.

A17

United States District Court

FOR THE
SOUTHERN DISTRICT OF NEW YORK

TO Mr Sidney Danielson
Regional Director
National Labor Relations Board
Federal Building, Room 3614, 26 Federal Plaza
New York, 10007

YOU ARE HEREBY COMMANDED to appear in the United States District Court
for the Southern District of New York, at the courthouse, Foley Square in the City of New York, in
said District, on the **14th** day of September A. D. 1973, at 2pm
o'clock M. of said day (and bring with you the complete files kept in the
usual order of business re

Central Gulf Steamship Corp

Case No. 2 CA 12445

American Radio Association

(Central Gulf Steamship Corp)

Case No 2-CB - 5033

American Radio Association, (Grace Steamship Co,) Case no. CB-4788
then and there to testify on behalf of the

in a suit pending in said Court wherein Archie Peltzman is Plaintiff
and Central Gulf Steamship Co. is Defendant.

August 23, 1973.

RAYMOND F. BURGHARDT

JOHN L. WINGSTON, Clerk

Archie Peltzman
Attorney for Plaintiff, Pro Se

8725 16th Ave,
Bklyn, NYC 11214

Address

By

B. Edwards
B. EDWARDS, Deputy Clerk.

Note: Report at the JUDGMENT OFFICE, ROOM No. 601-C

A 18



NATIONAL LABOR RELATIONS BOARD

REGION 2

Federal Building, Room 3614, 26 Federal Plaza

New York, New York 10007

Telephone 264-0300

August 20, 1973

Mr. Archie Peltzman
8725 16th Avenue
Brooklyn, New York 11214

Re: Central Gulf Steamship Corp.
Case No. 2-CA-12445

American Radio Association
(Central Gulf Steamship Corp.)
Case No. 2-CB-5033

American Radio Association
(Grace Steamship Co.)
Case No. 2-CB-4788

Dear Mr. Peltzman:

Your recent request for permission to look at and copy all of the information contained in the files of the above-named cases is denied.

The National Labor Relations Board's Rules and Regulations pertaining to the availability of Board materials and formal documents for public inspection and copying, and the prohibition against producing files and records, are quite specific and I am enclosing herewith a copy of said rules for your perusal.

Mr. Shapiro of this office has supplied you with the only material that the Rules permit us to give you, and despite our desire to fully cooperate with you, we are prevented by the Rules from making any other documents in the files available to you.

Very truly yours,

Sidney Danielson
Regional Director

Encl.

A19
MEMORANDUM OF LAW

1. In Annotation 4 Alr Fed -NLRB -Amendability to discovery. Sec 7 p.512, are cases which refute the cases cited on page 2 of NLRB pleadings to quash. Those cases hold that in Federal Court actions, there is a general rule permitting discovery, and that is governed by the applicable discovery rules, and the Court is not bound by any administrative rule or regulation of the Board regulating or prohibiting the discovery of material held by Board's personnel. (Sporandor v Milk Drivers Dairy Employee Local Union (1964 CA 10), 334 F2d 381) -holding that NLRB director produce the files and documents in camera, for the purpose of enabling court to determine which documents should be produced in Court. Also held that it was for the lower Court and not the governmental agency to determine whether documents sought to be withheld under a claim of privilege are entitled to this protection. Also held that a sufficient showing of good cause had been made for production of the documents, since documents were directly related to one of the defenses asserted in the action below.

2. Cases involving the right to discovery of NLRB files containing statements made to Board by informants and witnesses, and cases discussing the right to discovery of other intra-agency communications are discussed infra in Sec 9 & 10. (NLRB v Schill Steel Products Inc (1969 CA5) , 403 F2d 803, 4ALR Fed 493.)

3. The U.S. Court of Appeals for District of Columbia, has set guidelines for withholding U.S. Records, (N.Y. Times August 21, 1973, citation unavailable as yet, but plaintiff will try to get it before hearing on motion to quash.) The Court has set these guidelines.

a. Federal agencies must give the Court a detailed analysis of reasons for refusal to disclose information.

b. Government agencies are to establish an indexing system that divides documents into manageable parts that are cross-referenced.

c. Trial Courts can designate special examiners called masters to examine documents and to evaluate an agency's contention of exemption so the Courts can handle "the enormous document generating capacity of governmental agencies."

The three judge panel said that the governments refusal to disclose information "seriously distorted the traditional adversary nature" of the legal system because "the person with the greatest interest ~~in obtaining disclosure~~ in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information".

3. In Sears Roebuck & Co, on its own behalf, & on behalf of other charging parties under the National Labor Relations Act v NLRB & Eugene Goslee, acting General Counsel, in his own behalf, & as agent for the NLRB. 346 F2 751 (1972) *Proceedings on cross-motion by plaintiff to compel disclosure of advice and appeals memoranda issued by General Counsel of NLRB. The District Court Corcoran J, held that advice and appeals memoranda issued by General Counsel of NLRB must be made available to employer bringing unfair labor practice charge against union and must include names of parties, names of attorneys, citations to previous cases, and all other information for which justification for deletion has not been explained fully in writing, except name of affiants, and settlement suggestions from office of General Counsel to regional director.

4. A Dept. of Justice order no. 530-73; 7-11-73, lays down guidelines regarding Justice Dept's defense of civil actions against federal agencies under Freedom of Information Act, 5 U.S.C. Sec 552 are promulgated. This order instructs the Freedom of Information

A 21

Committee to make every possible effort to advance the objective of the fullest responsible disclosure.

Wherefore, the plaintiff respectfully prays that the NLRB produce the records, and allow plaintiff to copy relevant parts, or produce the records in camera for Court's determination of release of relevant documents or whole record. Plaintiff does not now require any Board personnel to testify in the above action.

Respectfully submitted,

Archie Peltaman

Dated: September 19, 1973

Archie Peltaman, plaintiff pro p o

8725 16th ave
Bklyn, NY, 11214

256-4658

Archie Beltzman
8725 16th Ave
Bklyn 11214 N.Y.C.
July 26, 1973

A22

N.L.R.B.

Area two

Mr Sidney Danielson

Dear Sir,

I inquired of Mr Shapiro July 24, 1973
for permission to look at + copy documents
from the files in my cases against the
Central Gulf S.S. Co Case No 2 C.A. 12445, +
the American Radio Assn Case No 2 C.B. 5033.
Also a case against the union + Grace S.S. Co
Case No 2 C.B. 4758. He gave me some documents.
but I now request your permission to
look at + copy all the information in any of
these cases. I don't recall any other complaints,
but I ask for permission to look at all my
complaints in these cases, + the documents therein.

I look forward to cooperation from your
office, as I believe sincerely that the
ultimate decisions in these cases will
require the information that you have
in your files. This information is necessary
in my litigation against the Central Gulf S.S. Co.
Sincerely

Archie Beltzman

COPY OF MEMBERSHIP BOOK DATED MAY 26, 1944 AND SHOWING DUES PAYMENTS MAY 10, 19

A 23

Book No. 2

(This is to certify that)

MEMBER'S SIGNATURE

TRANSFER RECORD

To: From: Date:

To: From: Date:

To: From: Date:

MEMBER'S SIGNATURE

DUES RECORD

1940 1941 1942 1943 1944

1940 \$15.00 NO. 4403 DATE 1/1/40

1941 \$15.00 NO. 5426 DATE 5/16/41

1942 \$15.00 NO. 504 DATE 7/12/42

1943 \$15.00 NO. 4492 DATE 4/1/43

1944 \$15.00 NO. 4492 DATE 4/1/44

NATIONAL BOOK No. 5040

This is to certify that—

Archie L. Lethman

(NAME OF MEMBER—PRINT CLEARLY)

is a member of District Local No. 2

AMERICAN COMMUNICATIONS ASSOCIATION, C.I.O.

Marine Department

Archie L. Lethman

(MEMBER'S SIGNATURE)

Note—This book is void unless signed by member and Local Sec'y-Treas.

Signature of Secretary-Treasurer of local to which member belongs

Archie L. Lethman

LOCAL MEMBERSHIP BOOK No.

Date member first initiated.....Y., 1944

Date member reinstated if membership not continuous....., 19....

Date and place at which this book was issued..... 5/26, 1944

NYC

(CITY)

This book issued by

Archie L. Lethman

(SIGNATURE OF ISSUING OFFICER OR DELEGATE)

This Membership Book issued by the International Office of the American Communications Association, C.I.O. 5 Deekman Street, New York 7, N. Y.

Archie L. Lethman

President

A24

PAYMENTS

1st Qtr 1968 A.R.A. AFL-CIO \$70.00 No. 258 DATE 3/1/68	1st 1968 A.R.A. AFL-CIO \$70.00 4127 DATE 3/1/68	2nd Qtr 1968 A.R.A. AFL-CIO \$70.00 3102 DATE 5/1/68	3rd Qtr 1968 A.R.A. AFL-CIO \$70.00 3103 DATE 7/1/68	4th Qtr 1968 A.R.A. AFL-CIO \$70.00 3404 DATE 9/1/68	Special FF 1968
1st Qtr 1969 A.R.A. AFL-CIO \$70.00 1376 DATE 3/1/69	2nd Qtr 1969 A.R.A. AFL-CIO \$70.00 1376 DATE 5/1/69	3rd Qtr 1969 A.R.A. AFL-CIO \$70.00 2131 DATE 7/1/69	4th Qtr 1969 A.R.A. AFL-CIO \$70.00 5168 DATE 9/1/69		

(To be Retained by Radio Officer)

OFFICIAL ASSIGNMENT

AMERICAN RADIO ASSOCIATION, AFL-CIO

Port of N.Y. Date 4-16-69 Time 15:45
 Name A. Peltzman Book No. P.C.H.
 Assigned to N.Y. Inactive Grp 2 From SS Rutgers Victory
 S.S. Company Grace Line Rating only
 Perm. ☐ Temp. ☒ Master Beach List No. Group: TWO
 Dues Paid through 2nd Qtr 1969 and Funds.

Remarks

P. O. Mallez a Peltzman
 Signed—ARA Official Signed—Radio Officer

ORIGINAL
 (To be Retained by Member)

OFFICIAL



ASSIGNMENT

Port of New York Date 3/17/50
 Name Archib. Peltzman Book No. 204
 Assigned to Boston Inactive from NY Inactive
 S.S. Company Rating
 Perm. ☐ Temp. ☐ Referred to District
 Transferred to District
 Remarks

425

Archie Peltzman
8725 I6th Ave,
Bklyn, II2I4, NYC
August I, I973

Central Gulf S-S. Co.
I Whitehall St.
NYC

Mr George A. Atkinson - Re Civil Action 73-29II

Dear Mr Atkinson,

This is a request similar to one previously sent to Mr C.E. Whitcomb on July 22, I973. Because of not receiving any reply from Mr Whitcomb to date, I hereby request, pursuant to Rule 34, defendant Central Gulf S.S.Co. to respond within ten days to the following requests.

I. Correspondence from the union, the American Radio Assn. relating to this cause of action, and the replies if any.

2. Correspondence to and from the Captain's of the S.S. Green Ridge relating specifically to this cause of action before and after discharge.

3. The present addresses of the Captains of the S/S Green Ridge, at the time of employment of plaintiff.

4. Correspondence to and from the Association representing the Company in any disputes with the union vis a vis its employees, having to do specifically with plaintiff's cause of action. (The American Merchant Marine Institute).

5. Correspondence to or from the National Labor Relations Board relating to plaintiff's complaint against the company, (case no. cb-5033), together with any affidavits filed in that case.

6. The copies of the articles on the three voyages the plaintiff made prior to his dismissal, and the subsequent articles after his discharge to the present time.

7. The official assignment slips from the union containing the names of the Radio Officers who have replaced the plaintiff aboard the S/S Green Ridge.

8. Any and all correspondence or documents from anyone to or from the Company, or its agents relating specifically to plaintiff's cause of action.

Archie Peltzman
Plaintiff Pro Se
8725 I6th ave, bklyn nyc II2I4

 **CENTRAL GULF LINES, INC.**
International Trade Mart
New Orleans, Louisiana 70130

A26

Tel. (504) 529-5461
TWX 810-951-6044
Telex 058-7435
Cable: CENTRASHIP

August 7, 1973

Mr. Archie Peltzman
8725 16th Avenue
Brooklyn, New York 11214

Re: Civil Action
73-2911

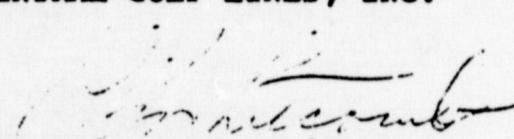
Dear Mr. Peltzman:

Both your July 22 and August 1, 1973 letters are
in the hands of our attorneys, Messrs. Lorenz, Finn,
Giardino & Lambos, 21 West Street, New York, N.Y.
10006 for furtherance and reply.

Yours very truly,

CENTRAL GULF LINES, INC.

CEW:dh


Captain C. E. Whitcomb
Manager Marine Personnel

ccs: Mr. James Flynn,
Messrs. Lorenz, Finn,
Giardino & Lambos
Mr. G. A. Atkinson, N.Y. Office



An Affiliate of
Trans Union Corporation

A 27

LORENZ, FINN, GIARDINO & LAMBOS

21 WEST STREET

NEW YORK, N. Y. 10006

CABLE ADDRESS
RENZLO

TELEPHONE
943-2470

August 16, 1973

Mr. Archie Peltzman
8725 16th. Avenue
Brooklyn, New York 11214

Dear Mr. Peltzman,

This letter is in response to your letter dated August 1, 1973, and addressed to our client Central Gulf Lines, Inc. requesting various information regarding your civil action against Central Gulf.

The status of the information requested is as follows:

1. Nothing in this category exists in Defendant's files. (See letter of Captain Whitcomb to you dated September 1, 1971);
2. A letter from Captain Kenopke to you dated May 28, 1971 is the only item in this category in Defendant's files;
3. The address of Captain Kenopke is available in Defendant's files;
4. Nothing in this category exists in Defendant's files;
5. These are matters of public record and are available from the National Labor Relations Board;
6. Articles are lodged with the United States Coast Guard Shipping Commissioner. The steamship company is never in possession of these documents after a voyage is terminated;

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LORENZ, FINN, GIARDINO & LAMBOS

21 WEST STREET

NEW YORK, N. Y. 10006

CABLE ADDRESS
RENZLO

TELEPHONE
943-2470

-2-

- 7. Nothing in this category exists in Defendant's files;
- 8. This request is not specific enough to be identified.

If you will contact this office we will arrange to make the above documents available for your inspection and copying at a mutually convenient time and date.

Yours truly,

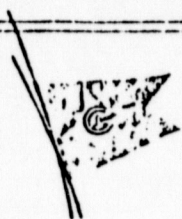
Richard P. Lerner
Richard P. Lerner

RPLss

402 A 29

EXHIBIT-LETTER DATED SEPTEMBER 1, 1971 - CENTRAL GULF STEAMSHIP CORP. TO
MR. PELTZMAN
CENTRAL GULF STEAMSHIP CORPORATION

TELEPHONE 529-5461
TELEX 058-7475
TWA 810-951-6044



CABLE ADDRESS
CENTRASHIP

International Trade Mart

No. 2 Canal Street

New Orleans, La., U.S.A. 70130

September 1, 1971

Mr. Archie Peltzman
8725 16th Avenue
Brooklyn, New York 11214

Dear Mr. Peltzman:

This is in reply to your letter of August 17, 1971 requesting correspondence between this office and the A.R.A. in connection with your removal by the Union, from our SS Green Ridge.

We have never corresponded with the Union concerning your case. The New Orleans A.R.A. agent telephoned the writer to ascertain the itinerary of the vessel, a few days prior her arrival Bayonne.

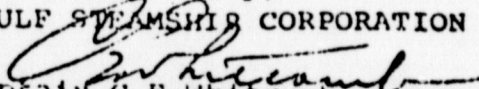
After the vessel arrived Bayonne, A.R.A., New York informed the writer telephonically that you would have to be replaced until some details of your standing with the Union were resolved.

As it was clearly a parochial problem the writer did not inquire of reasons and circumstances surrounding the case, but to avoid our becoming involved in a breach of our contract with A.R.A., the Master was instructed not to sign you on until you produced a clearance from the Union.

Due to our not having any correspondence with the A.R.A., we were under the erroneous impression a relief man had been assigned to the Green Ridge while your differences with the Union were being resolved, thus the reason for our routine wire notice to rejoin.

As you no doubt know, our contract with the A.R.A. prohibits our selecting or employing Radio Officers, they are assigned by the A.R.A. in accordance with their shipping rules.

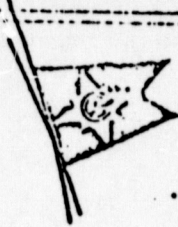
Yours very truly,
CENTRAL GULF STEAMSHIP CORPORATION


Captain C. E. Whitcomb
Manager Marine Personnel

CEW:dh
cc: Mr. G.A. Atkinson, N.Y.

A23
EXHIBIT A- LETTER DATED MAY 28, 1971 CENTRAL GULF STEAMSHIP CORP. TO
MR. PELTZMAN
CENTRAL GULF STEAMSHIP CORPORATION

TELEPHONE 528-3401
TELEX 050-7435
TWX 610-951-6044



CABLE ADDRESS
CENTRASHIP

*International Trade Mart - P.O. Box 53
No. 2 Canal Street
New Orleans, La., U.S.A. 701*

S.S. Green Ridge
New York N.Y.
May 28, 1971

Mr. Archie Peltzman
Radio Officer

Dear Mr. Peltzman:

In accordance with your request I have ordered a replacement. Please be advised that you will not be able to rejoin the vessel without proper clearance from the Union.

Yours truly

W.C. Kenofke
W.C. KENOFKE, MASTER
S.S. GREEN RIDGE

EXHIBIT- LETTER DATED JANUARY 13, 1971 FROM UNION DEMANDING PAYMENT
American Radio ^{A31} Association

270 Madison Avenue • New York, N. Y. 10016 • MUrray Hill 9-5754 • Cable Address: ARADIOCIO NEWYORK

W. R. STEINBERG
 President
 PHILIP A. O'Rourke
 Vice-President
 BERNARD L. SMITH
 Sec'y.-Treas.

NATIONAL COUNCIL

JOSEPH Y. RUBIN
 TED BERMAN
 HARVEY STRICHARTZ
 RALPH BAIRD
 FLOYD HEPTING

January 13, 1971

Mr. Archie Peltzman
 185 Wortman Avenue
 Brooklyn, N. Y. 11207

Dear Sir:

Please be advised that pursuant to Section 4 (b) of the Collective Bargaining Agreement entered into between the American Radio Association, AFL-CIO and the Central Gulf Steamship Co., you are required as a condition of employment to become a member in good standing of this Organization.

Accordingly, within thirty (30) days from the date hereof, you are required to tender the sum of Two Thousand Dollars (\$2,000.00), (together with arrears of all dues and fees, if any,) as the initiation fee required for acquiring Union Membership.

If such payment is not made, we shall have no alternative than to request your immediate discharge by the Company.

Very truly yours,

Bernard L. Smith
 Bernard L. Smith
 Secretary-Treasurer

BLS:LB

Via REGISTERED R.R.R.

cc: SS GREEN RIDGE, % Wilmington Shipping Co.
 P.O.Box 1809, Wilmington, N.C. 28401 (AIR MAIL, REG.R.R.R.)

cc: Central Gulf S.S.Co., New Orleans, La.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARCHIE PELTZMAN,

PLAINTIFF,

-against-

CENTRAL GULF STEAMSHIP CO.

DEFENDANT,

MOTION (F.R.C.P. RULE 37)
73 Civ.2911 (WK)

NOTICE OF MOTION FOR ORDER COMPELLING DISCOVERY
MATERIAL, AND DEPOSITION AFFIDAVITS, AND FOR STIPULATION
REGARDING GENUINENESS OF DOCUMENTS.

To: Lorenz, Finn, Giardano & Lambos
21 West St.
New York 10006

Please take notice that the undersigned will move this
Court at Room 906, United States Court House, Foley Square, City
of New York, on the 11th day of December 1973, at 10 A.M. o'clock
in the forenoon of that day or as soon thereafter as counsel
can be heard, for an order requiring you to produce the affidavits
of officials of the Central Gulf S.S. Co. as requested in the
letter of October 5, 1973 (attached), and for a stipulation as
requested in the same letter regarding the genuineness of the
documents attached to that letter, (attached).

Archie Peltzman
Archie Peltzman
Plaintiff Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 33

ARCHIE PELTZMAN,

PLAINTIFF,

-against-

CENTRAL GULF STEAMSHIP CO.

DEFENDANT,

X,

"

22-AFFIDAVIT & PLEADINGS

73 Civ.2911 (EK)

X

AFFIDAVITS & PLEADINGS RE:

PLAINTIFF'S MOTION FOR AN ORDER COMPELLING DISCOVERY
MATERIAL AND STIPULATION REGARDING GENUINNESS OF DOCUMENTS.

Archie Peltzman plaintiff pro se in the above action, makes the following affirmation.

1. That he wrote a letter dated October 5, 1973 requesting discovery material and asking for a stipulation regarding the genuiness of documents attached to that letter.

2. That no answer to that letter or any phone calls have been received by the plaintiff to this date November 26th, 1973.

3. Documents attached are listed in the letter of October 5, 1973 For Memorandum Of Law for this motion, please refer to plaintiff's Motion of September 14, 1973 (Motion to require deponent to permit inspection and copying of papers.), and cases cited in that Memorandum of Law.

4. Wherefore plaintiff respectfully prays that an order be issued requiring the defendant to supply discovery material requested, and admit by stipulation the genuiness of the attached documents.

Respectfully Submitted

Archie Peltzman

Archie Peltzman, Plaintiff Pro Se

Sworn to before me this day

26th day of November 1973

A34

Archie Peltzman
8725 16th Avenue
bklyn, NYC
October 5, 1973

• Lorenz, Finn, Giardino, & Lambos
21 West St

• NYC

Gentlemen;

This is a request pursuant to the applicable rules of ERCP, for the admission of the genuiness of the following enclosed documents. Also I request the official or officials who authorized the Captain of the S/S Green Ridge to discharge me, to sign an affidavit, containing specifically the events that led to this discharge, and refusal to rehire. Specifically, I request, in the affidavits of these officials, whether or not any of these officials enquired of the plaintiff as to his status in the union before or after dismissing the plaintiff. Specifically, the affidavit should contain the reason or reasons in detail for the dismissal and refusal to rehire.

Documents enclosed.

- 1/ F.C.C. license showing a very good endorsement endorsement on the S/S Green Ridge from August 6, 1970 to May 2, 1971.
2. Official assignment slip to the S/S Green Ridge as a permanent Radio Officer dated 8-6-70, from the American Radio Association.
3. Official assignment slip to the inactive list Group 2 from a temporary position on the S/S Rutgers Victory dated 4-16-69, from the American Radio Association.
4. Vacation Benefit Voucher from the A.R.A. Vacation Plan showing dates of employment, 8-6-70, to 5-28-71, and deduction of \$ 244.52 for union dues.
5. Docket entry No. 2791, United States Court Of Appeals, 2nd Circuit, N.L.R.B. v American Radio Association showing date of consent decree Nov 28, 1950.

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6. Docket entry No. 24737 U.S. Court of Appeals for 2nd Circuit
-N.L.R.B. v American Radio Association.-Decree filed July 19,
1957.

7. Telegram dated August 30, 1971 from Central Gulf SS. Co. to
Archie Peltzman.

8. Letter to American Merchant Marine Institute. (no date) from
Archie Peltzman.

9. Letter to Secy-Treasurer Smith of American Radio Association,
dated June 18, 1971, from Archie Peltzman.

9. Pages 22-26, 31-33 of Constitution of the American Radio
Association, dated June 28, 1970.

10. pages 12-15 of National Assignment Rules of American Radio
Association dated June 28, 1970.

11. pages 18-23, 25-27, 39-42, 65-67 of National Agreement with
various steamship companies and American Radio Association, dated
June 16, 1969.

If you will contact me (phone 256-46580), a stipulation as
to these documents, and other related matters as to the deposition
affidavits can effectively move this law suit to a speedy
conclusion.

Yours truly,

Archie Peltzman

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Exhibit-

COPY OF GROUP 2 ASSIGNMENT SLIP AND DUES PAYMENTS 1968 AND 1969

A29

PAYMENTS					
1st. st. 1968	FF 1968	2nd. st. 1968	3rd. st. 1968	4th. st. 1968	Special FF 1968
A.R.A. AFL-CIO \$70.00 259 DATE 2/1/68	A.R.A. AFL-CIO \$70.00 4127 DATE 2/1/68	A.R.A. AFL-CIO \$70.00 3102 DATE 2/1/68	A.R.A. AFL-CIO \$70.00 3103 DATE 2/1/68	A.R.A. AFL-CIO \$70.00 3404 DATE 2/1/68	
1st. st. 1969	2nd. st. 1969	3rd. st. 1969	4th. st. 1969		
A.R.A. AFL-CIO \$70.00 13765 DATE 2/1/69	A.R.A. AFL-CIO \$70.00 13766 DATE 2/1/69	A.R.A. AFL-CIO \$70.00 2131 DATE 2/1/69	A.R.A. AFL-CIO \$70.00 5168 DATE 2/1/69		

(To be Retained
by Radio Officer)

OFFICIAL ASSIGNMENT

AMERICAN RADIO ASSOCIATION, AFL-CIO

Port of N.Y. Date 4-16-69 Time 15:45
 Name A. Peltzman Book No. P.C.H.
 Assigned to N.Y. Inactive Grp 2 From SS Rutgers Victory
 S.S. Company Grace Lino Rating only
 Perm. ☐ Temp. ☒ Master Beach List No. _____ Group: TWO
 Dues Paid through 2nd Qt 1969 and Funds.

Remarks _____

Signed-ARA Official

Signed-Radio Officer

ORIGINAL

(To be Retained by Member)

OFFICIAL



ASSIGNMENT

Port of New York Date 3/17/50
 Name Archia Peltzman Book No. 201
 Assigned to Boston Inactive from IT 1045
 S.S. Company _____ Rating _____
 Perm. ☐ Temp. ☐ Referred to ☐ Too: _____
 Transferred to _____ District _____
 Remarks _____

A37



Telegram

(57)SYD163 NSA053

NS LLE012 PN PDB TLX NEW ORLEANS LA 30 1006A CDT

ARCHIE PELTZMAN

135 WORTHAN A E BKLYN

DISREGARD PREVIOUS NOTICE TO REJOIN OUR SS GREEN RIDGE AS ARA
HAVE PERMANENTLY ASSIGNED A RADIO OFFICER

CENTRAL GULF SS CORP.

1971 AUG 30 AM 11 51

(1050)

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WARNING

FOR YOUR OWN PROTECTION, BE SURE THAT THE RADIO EQUIPMENT IS COVERED BY A CURRENTLY VALID RADIO STATION LICENSE. A LICENSED OPERATOR OF THE PROPER CLASS MUST BE RESPONSIBLE FOR THE PROPER FUNCTIONING OF THE TRANSMITTER. ALL LICENSED RADIO OPERATORS SHALL OBEY AND CARRY OUT THE LAWFUL ORDERS OF THE MASTER OR PERSON LAWFULLY IN CHARGE OF THE SHIP OR AIRCRAFT ON WHICH THEY ARE EMPLOYED.

PROHIBITIONS: UNAUTHORIZED DISCLOSURE OR USE OF MESSAGES.
USE OF OBSCENE, INDECENT OR PROFANE LANGUAGE.
FALSE OR DECEPTIVE SIGNALS OR COMMUNICATIONS.
UNNECESSARY, UNIDENTIFIED OR SUPERFLUOUS COMMUNICATIONS.
WILLFUL OR MALICIOUS INTERFERENCE WITH COMMUNICATIONS.

KNOW YOUR CURRENT RADIO LAWS, TREATIES, RULES AND REGULATIONS. THEIR OBSERVANCE WILL SERVE BOTH YOUR INTEREST AND THE PUBLIC INTEREST.

SERVICE RECORD

This is to certify that the holder of this license has served as radio operator under my orders during the period named.

SHIP OR OTHER STATION	NAME	CALL LETTERS	TYPE(S) OF EMISSION	PERIOD	CHARACTER OF TECHNICAL SERVICE PERFORMED (SATISFACTORY OR UNSATISFACTORY)	CERTIFIED BY SIGNATURE	TITLE (STATION LICENSEE, MASTER, MANAGER, OR AUTHORIZED AGENT)
	E. J. Williams	WAEX		From Jan 21, 1967, to Feb 25, 1968	Satisfactory	[Signature]	
	Indiana University	KCNE		From July 8, 1968, to Oct 27, 1968	Fair	[Signature]	
	Rutgers University	KQVF		From Mar 2, 1968, to April 29, 1969	Very good	[Signature]	E. P. Calabrese
	Green Ridge	KKPR		From May 2, 1969, to Jan 7, 1970	Satisfactory	[Signature]	
	Rebin Goodfellow	KOFT		From Mar 10, 1970, to June 23, 1971	"	[Signature]	A. K. [Signature]
	Green Ridge	KKPR		From Aug 6, 1970, to May 2, 1971	Very good	[Signature]	
				From _____, 19____, to _____, 19____			
				From _____, 19____, to _____, 19____			
				From _____, 19____, to _____, 19____			
				From _____, 19____, to _____, 19____			
				From _____, 19____, to _____, 19____			
				From _____, 19____, to _____, 19____			

A. Peltzman
185 Westman Ave
Bklyn 11207
N.Y.C.

Secretary of Appeals Board
American Merchant Marine Institute
Dear Sir,

Ed I am filing this complaint, because the A. R. A. refuses to put my name on the Group 2 list & because they insist they will not do so unless I pay an initiation fee of \$2,000 in order to become a member.

My position is that I am a member, (see enclosed documents National Book no 5049 of American Communications Association + Book No 284 of American Radio Assn.)

Also official Assignment Ship date 3/17/59. I returned to sea after being illegally deprived of my license by the Coast Guard. I have sailed on three voyages as a permit card member from Group 2 (see document).

My position is that in effect I was illegally deprived of my license & since that suspension was removed, my membership automatically becomes active again, even if 17 years have elapsed, since I have already made 3 voyages from Group 2 list, or more than one year & 6 months since I started sailing again in Dec of 1967.

Please advise me of your decision in this matter.

Sincerely,
N. Peltzman

A40 185

Exhibit - Copies of Assignment Slips and Permit Card

ORIGINAL
(To be Retained
by Radio Officer)

OFFICIAL ASSIGNMENT

AMERICAN RADIO ASSOCIATION, AFL-CIO

Port of Atl. Date 8-6-70 Time 14:15
Name PELTZMAN Archie Book No. P.C.M.
Assigned to SS Green Ridge From Atl. Active
S.S. Company Central Gulf S/S Rating only
Perm. ☒ Temp. ☐ Master Beach List No. 161 Group: 1
Dues Paid through _____

Remarks Report to Dr. Dasch 71 Broad St Then to Company
Mr. Vroman, One Whitehall St. 20th Floor for processing
to ship at Sunny Point N.C.

W. M. Kelley Signed-ARA Official
Archie Pelzman Signed-Radio Officer

A40 (23)

Exhibit - Copies of Assignment Slips and Permit Card

ARA VACATION PLAN
270 Madison Avenue
New York, N. Y. 10016

DETACH BEFORE DEPOSITING
VACATION BENEFIT VOUCHER
Detach and retain for your records

Check **EA No 3572**

Claim No. EC-71-4

Soc. Sec. No. 115-01-0623

Employment record

1. Overall period during which employment is claimed 8/6/70 - 5/28/71
2. Total days employed (including vacation) 296
3. Name of Employer Central Gulf - Green Ridge

Computation of benefit

Vacations days due	93.7432
Applicable daily wage rate	\$ 43.4733
Gross benefit payable	\$ 4,075.33
Less: F.O.A.B.	\$ 211.92
Withholding tax	\$ 815.07
New Jersey u/c	\$
Other deductions 6% Union Dues	\$ 244.52
Total deductions	\$ 1,271.51
Net amount of check	\$ 2,803.82
Date of check	<u>6/10/71</u>

NOTE: If there is any discrepancy between the above statement and your records, please bring or send by mail all Coast Guard discharge papers or pay vouchers pertaining to the period in question to the ARA Vacation Plan at the above address.

A41 ~~25~~

EXHIBIT C- LETTER DATED JUNE 18, 1971-MR. PELTZMAN TO
AMERICAN RADIO ASSOCIATION

June 18, 1971

Archie Peltzman

8725 16th Ave

Bklyn 11264 NYC

Mr Bernard Smith

270 Madison Ave

New York 10016

Re - Jan 13, 1971

Letter

This will confirm my receipt of
this letter dated Jan 13, 1971 which was
handed to me by Mr. John Valachi
on board the S/S Green Ridge May 28, 1971

I repeat now what I have
told him & you before the receipt
of this letter. I will not pay any
initiation fee, whether it is \$2.00 or
less. I have offered to pay a
withdrawal fee which is known
one year dues.

A42

Exhibit C- Letter Dated June 18, 1971-Mr. Peltzman to
American Radio Association

However, if you do not
accept this offer, before I institute
an appeal to the United States
2nd Circuit from a NLRB ruling
which claims that I have to
rejoin the union as a new
member, then the offer is
withdrawn & I will rely on the
Federal Courts to reinstate me.
Sincerely Archie Peltzman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 43

----- x
ARCHIE PELTZMAN,

Plaintiff,

-against-

CENTRAL GULF LINES, INC. (sued
herein as "CENTRAL GULF STEAM-
SHIP CO."),

Defendant.
----- x

:
:
: VERIFIED ANSWER TO
: AMENDED COMPLAINT
:
:
:

73 Civ. 2911 WK

Defendant, CENTRAL GULF LINES, INC., by its at-
torneys LORENZ, FINN, GIARDINO & LAMBOS, as and for its
Answer to Plaintiff's Amended Complaint, alleges as follows:

1. Denies each and every allegation contained in
paragraph 1 of the Complaint, but admits that the action is
an action for an amount in excess of \$10,000 and that there
is diversity of citizenship.

2. Denies each and every allegation contained in
paragraphs 4, 4(a), 10, 12, 13, 15 and 15(a)(I) of the
Complaint.

3. Denies that it has any knowledge or informa-
tion sufficient to form a belief as to the truth of the al-
legations contained in paragraph 3 of the Complaint.

4. Denies each and every allegation contained in
paragraph 6 of the Complaint, but admits that Plaintiff
served as a Radio Officer - from August 8, 1970 to May 28,
1971 - for three foreign voyages aboard the S.S. Green Ridge
and that Plaintiff signed articles for each voyage.

5. Denies each and every allegation contained in paragraph 9 of the Complaint but admits that no hearing or arbitration under the collective bargaining agreement in effect between Central Gulf Lines, Inc. and the American Radio Association, AFL-CIO, the duly recognized and authorized bargaining agent of the Plaintiff, was held prior to dismissal of Plaintiff; and further, upon information and belief, state that no grievance under the collective bargaining agreement has, to date, been filed by Plaintiff.

6. Denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiff since his discharge from the S/S Green Ridge has not worked in the maritime industry and denies each and every other allegation contained in paragraph 11 of the Complaint.

7. Denies each and every allegation contained in paragraph 14 of the Complaint, except denies it has any knowledge or information sufficient to form a belief as to whether Plaintiff has sought prior relief in the Federal Courts.

As And For A First Affirmative Defense

8. Repeats, realleges, and reiterates each and every allegation contained in paragraphs 1 to 7 of this Answer as if fully set forth at length herein.

9. That the National Labor Relations Board has exclusive jurisdiction of the instant subject matter thereby

preempting this Court from further action.

As And For A Second Affirmative Defense

10. Repeats, realleges and reiterates each and every allegation contained in paragraphs 1 to 9 of this Answer as if fully set forth at length herein.

11. That on the 14th day of September, 1971 Plaintiff filed an Unfair Labor Practice Charge against Defendant with the National Labor Relations Board concerning the same subject matter covered by the instant Complaint.

12. That after a full investigation, that Board refused to issue a Complaint stating in a letter to Plaintiff on October 26, 1971 that:

"The evidence establishes that the Company refused to re-hire you as a crew member aboard the S/S Green Ridge pursuant to a valid Union security provision between it and the American Radio Association, AFL-CIO because of your failure to remit initiation fees after notification by the latter that such fees were due and not for any reason prohibited by the afore-said Act. I therefore am refusing to issue a complaint in this matter."

13. That subsequent appeals to the Board to review the refusal to issue a Complaint were denied.

14. That a similar Unfair Labor Practice Charge was filed by Plaintiff with the National Labor Relations Board, against the American Radio Association, AFL-CIO, concerning this same matter and that the Board refused to issue a complaint and that it denied Plaintiff's subsequent appeals.

15. Therefore, that on October 26, 1971, in an action before the National Labor Relations Board, Region 2,

by the Plaintiff in this action against this Defendant, for the same claim as that set forth in the Plaintiff's Complaint herein, a determination was rendered in the Defendant's favor dismissing Plaintiff's action on the merits and denying all subsequent appeals. By reason thereof, Plaintiff's claim set forth in the Complaint in this action has been previously adjudicated and determined.

As And For A Third Affirmative Defense

16. Repeats, realleges and reiterates each and every allegation contained in paragraphs 1 to 15 of this Answer as if fully set forth at length herein.

17. That the collective bargaining agreement between the Defendant and the American Radio Association, AFL-CIO, provides a detailed grievance procedure for the resolution of all grievances arising under the contract.

18. Upon information and belief, a grievance has never been submitted to the Defendant concerning this matter by Plaintiff and or his collective bargaining representative.

19. That Plaintiff has failed to exhaust his administrative remedies under the collective bargaining agreement between Defendant and the American Radio Association, AFL-CIO.

20. That Plaintiff by his failing to exhaust his administrative remedies under the applicable agreement has failed to state a claim upon which relief can be granted

As and For a Fourth Affirmative Defense

21. Repeats, realleges and reiterates each and every allegation contained in paragraphs 1 to 20 of this Answer as if fully set forth at length herein.

22. That on December 29, 1971, in an action brought by Plaintiff in New York Supreme Court, Special Term, Part 1, New York County against the American Radio Association, AFL-CIO, for the same claim as is set forth in the instant Complaint herein, judgment was rendered in the favor of that Defendant dismissing Plaintiff's action on the merits. By reason thereof, Plaintiff's claim set forth in the Complaint in this action has been previously adjudicated and determined.

As and For a Fifth Affirmative Defense

23. Repeats, realleges and reiterates each and every allegation contained in paragraphs 1 to 22 of this Answer as if fully set forth at length herein.

24. That Plaintiff has failed to state a claim upon which relief can be granted.

WHEREFORE, Defendant demands judgment dismissing the Complaint with costs and disbursements of this action.

Dated: New York, New York
August 16, 1973

Yours, etc.

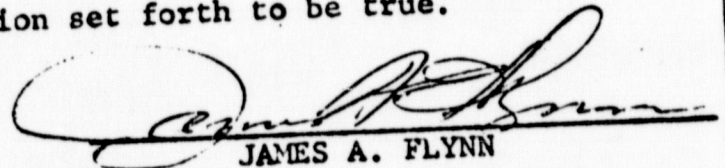
LORENZ, FINN, GIARDINO & LAMBOS
Attorneys for Defendant
CENTRAL GULF LINES, INC.
21 West Street
New York, New York 10006
(212) 943-2470

A48

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

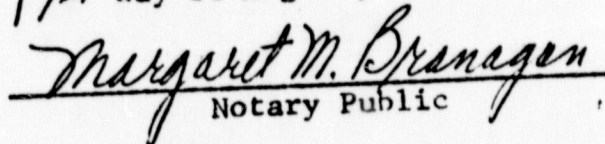
JAMES A. FLYNN, being duly sworn, deposes and
says:

That he is a member of the firm of LORENZ, FINN,
GIARDINO & LAMBOS, attorneys for Defendant, Central Gulf
Lines, Inc.; that he has read the foregoing Answer and
knows the contents thereof, and that the same is true to
his own knowledge except as to those matters alleged upon
information and belief, and that as to those matters, he
believes the information set forth to be true.


JAMES A. FLYNN

Sworn to before me this

17th day of August, 1973.


Notary Public

MARGARET BRANAGAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-5422500
Qualified in Kings County
Certificate Filed in New York County
Term Expires March 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

ARCHIE PELTZMAN,	:	73 CIV. 2911 W.K.
Plaintiff,	:	
-against-	:	NOTICE OF MOTION
	:	FOR SUMMARY
	:	<u>JUDGMENT</u>
CENTRAL GULF LINES, INC. (sued herein :	:	
as "CENTRAL GULF STEAMSHIP CO."),	:	Pursuant to Rule 56
Defendant.	:	

----- x

PLEASE TAKE NOTICE that upon the annexed motion and affidavit of James A. Flynn, sworn to the day of November, 1973, and upon the pleadings and proceeding heretofore had herein, the undersigned will move this Court at the U.S. Courthouse, Foley Square, Borough of New York, City and State of New York, on the 25th day of JANUARY, 1974, at 2:00 o'clock in the AFTERNOON of that day, or as soon thereafter as counsel can be heard for an Order granting Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Dated: November 23, 1973
New York, New York

LORENZ, FINN, GIARDINO & LAMBOS
Attorneys for Defendant
CENTRAL GULF LINES, INC.
(sued herein as "CENTRAL GULF
STEAMSHIP CO.")
21 West Street
New York, New York 10006
212-943-2470

TO:

ARCHIE PELTZMAN
Plaintiff

8725 16th Avenue
Brooklyn, New York

11124

7-50
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
ARCHIE FELTZMAN,

Plaintiff,

-against-

CENTRAL GULF LINES, INC., (sued herein:
as "CENTRAL GULF STEAMSHIP CO."),

Defendant.

:
: STATEMENT PURSUANT
: TO RULE 9(g)

: Civil Action
: No. 73 Civ.2911
: W.K.

- - - - - x
The following are material facts as to which
the moving party contends there is no genuine issue to be
tried.

1. The Defendant, Central Gulf, a steamship
company, has a collective bargaining agreement with the
American Radio Association, AFL-CIO ("ARA"). The contract
is identical in substance and in interpretation to all
contracts entered into between Dry Cargo and Passenger Ships
Companies and the ARA.

2. Plaintiff, a radio operator, is bound by all
Central Gulf - ARA contracts.

3. Plaintiff was employed by Defendant for
three voyages aboard its vessel, the S.S. Green Ridge.

4. During May, 1971, prior to the conclusion of
Plaintiff's third voyage, Defendant was advised by the
ARA that Plaintiff had failed to pay his union initiation
fee and that to continue to employ Plaintiff while he was
in arrears would be a violation of the union security
clause of the contract between Defendant and the ARA.

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5. On May 28, 1971, at the conclusion of his third voyage aboard the S.S. Green Ridge, Plaintiff was advised by the Master of the vessel that he:

"... will not be able to rejoin the vessel without proper clearance from the union."

6. Plaintiff is suing Central Gulf for an alleged wrongful discharge.

7. The instant claim is covered by the Central Gulf-ARA contract which contains grievance provisions stating in part that:

"Any radio officer ... who feels that he has been unjustly ... discharged ... shall endeavor to have such grievance adjusted according to the ... "

grievance machinery provided.

8. Plaintiff to date has failed to file a grievance concerning this claim.

9. Plaintiff's claim set forth in the complaint has been previously adjudicated and determined in favor of both Lines and the ARA by the National Labor Relations Board, Region 2 on October 21, 1971. Subsequent appeals to the Board have been denied.

10. Plaintiff's claim set forth in the complaint in this action has also been previously adjudicated and determined in favor of the ARA on December 29, 1971, in an action brought by Plaintiff against that defendant in New York Supreme Court, Special Term, Part I, New York County.

A 52

Yours, etc.,

LORENZ, FINN, GIARDINO & LAMBOS
Attorneys for Defendant
Central Gulf Lines, Inc.
21 West Street
New York, New York 10006
212-943-2470

By 

JAMES A. FLYNN
A Member of the Firm

----- x
ARCHIE FELTZMAN,

Plaintiff,

-against-

CENTRAL GULF LINES, INC. (sued herein
as "CENTRAL GULF STEAMSHIP CO.")

Defendant.
----- x

:
Civil Action No.
: 73 Civ. 2911 W.K.

:
MOTION FOR
SUMMARY JUDGMENT

: Pursuant to Rule 56
:
:

The Defendant, Central Gulf Lines, Inc., moves
this Court as follows:

I. To grant Summary Judgment pursuant to Rule 56
of the Federal Rules of Civil Procedure on the ground that
there is no genuine issue as to any material fact and that
the Defendant is entitled to a judgment as a matter of law
in that:

- (a) The National Labor Relations Board has
exclusive jurisdiction of the instant
subject matter thereby preempting this
Court from further action;
- (b) In an action before the National Labor
Relations Board, Region 2, brought by
the Plaintiff in this action against
this Defendant, for the same claim as
set forth in the Plaintiff's Complaint
herein, a determination was rendered
in the Defendant's favor dismissing
Plaintiff's action on the merits and
denying all subsequent appeals. By
reason thereof, Plaintiff's claim set
forth in the Complaint in this action
has been previously adjudicated and
determined;
- (c) In an action brought by Plaintiff in
New York Supreme Court, Special Term,
Part I, New York County against the
American Radio Association, AFL-CIO
("ARA"), for the same claim as is set

A.54

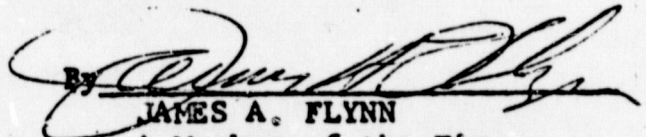
forth in the instant Complaint herein, judgment was rendered in the favor of that Defendant dismissing Plaintiff's action. By reason thereof, Plaintiff's claim set forth in the Complaint in this action has been previously adjudicated and determined;

- (d) Plaintiff has failed to exhaust his administrative remedies under the grievance procedure as set forth in the Collective Bargaining Agreement between Defendant Central Gulf Lines, Inc. and the ARA, a labor organization and the duly authorized agent on behalf of its affiliated locals, which represent employees including the Plaintiff;
- (e) Defendant refused to re-hire Plaintiff because to have reemployed him would have been a violation of the valid union security clause contained in the contract between the ARA, of which Plaintiff was a member and by whose contracts he is governed, and the Defendant, in that Plaintiff after notice failed to pay his initiation fees. Accordingly, Plaintiff has failed to state a claim upon which relief can be granted; or in the alternative,

II. To stay the instant proceeding pending Plaintiff's exhausting his administrative remedies under the grievance procedure of the Collective Bargaining Agreement between Defendant Central Gulf Lines, Inc. and the American Radio Association, AFL-CIO.

Dated: New York, New York
November 23, 1973

LORENZ, FINN, GIARDINO & LAMBOS
Attorneys for Defendant

By 

JAMES A. FLYNN
A Member of the Firm
Office and P.O. Address
21 West Street
New York, New York 10006
943-2470

TO:

ARCHIE FELTZMAN
Plaintiff
8725 16th Avenue
Brooklyn, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A. 55

----- x
ARCHIE FELTZMAN,

Plaintiff,

-against-

CENTRAL GULF LINES, INC. (suad herein : 73 Civ. 2911 W.K.
as "CENTRAL GULF STEAMSHIP CO."),

Defendant.
----- x

:
: AFFIDAVIT IN SUPPORT
: OF MOTION FOR
: SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JAMES A. FLYNN, being duly sworn, deposes and
says:

1. I am a partner of the firm of Lorenz, Finn,
Giardino & Lambos, Attorneys for Defendant, and am fully
familiar with all the facts and circumstances herein.

2. This affidavit is submitted in support of
Defendant's Motion for Summary Judgment pursuant to Rule 56
of the Federal Rules of Civil Procedure on the ground that
there is no genuine issue as to any material fact and that
Defendant is entitled to a judgment as a matter of law for
the reasons set forth in its Motion for Summary Judgment.
The instant action is for damages claimed to be due as a
result of an alleged wrongful discharge.

3. The Defendant, Central Gulf, a steamship
company, has a collective bargaining agreement with the
American Radio Association, AFL-CIO ("ARA"). The contract
is identical in substance and in interpretation to all
contracts entered into between Dry Cargo and Passenger ships

Companies and the ARA (a copy of which is annexed hereto as Exhibit A).

4. Plaintiff, a radio operator, is bound by all Central Gulf - ARA contracts.

5. Plaintiff was employed by Defendant for three voyages aboard its vessel, the S.S. Green Ridge.

6. During May, 1971, prior to the conclusion of Plaintiff's third voyage, Defendant was advised by the ARA that Plaintiff had failed to pay his union initiation fee and that to continue to employ Plaintiff while he was in arrears would be a violation of the union security clause of the contract between Defendant and the ARA (Exhibit A, p. 23).

7. On May 28, 1971, at the conclusion of his third voyage aboard the S.S. Green Ridge, Plaintiff was advised by the Master of the vessel that he:

"... will not be able to rejoin the vessel without proper clearance from the union." (Exhibit B).

8. For all of the reasons set forth hereinafter, Defendant's Motion for Summary Judgment should be granted.

THE NATIONAL LABOR RELATIONS BOARD HAS
EXCLUSIVE JURISDICTION OF THE INSTANT
SUBJECT MATTER

9. The U.S. Supreme Court has established the general principle that the National Labor Relations Act pre-empts state and federal court jurisdiction to remedy conduct that is arguably protected or prohibited by the Act. (San Diego Building Trades Council v. Garman, 359 US 236 (1959); Motor Coach Employees v. Lockridge, 403 US 274 (1971)).

10. The conduct which Plaintiff complains of is clearly conduct prohibited or protected by the National Labor Relations Act to wit, failure to re-employ Plaintiff based on his union status.

11. Accordingly, the National Labor Relations Board has exclusive jurisdiction of the instant subject matter thereby pre-empting this Court from further action.

12. The Plaintiff has recognized the exclusive jurisdiction of the National Labor Relations Board when he initially filed unfair labor practice charges with the National Labor Relations Board over the same matter.

PLAINTIFF'S CLAIM HAS BEEN PREVIOUSLY
ADJUDICATED AND DETERMINED BY THE
NATIONAL LABOR RELATIONS BOARD

13. On September 14, 1971, Plaintiff filed unfair labor practice charges with the National Labor Relations Board against defendant Central Gulf and the ARA concerning the same subject matter of the instant complaint.

14. After a full investigation, the Regional Director of the National Labor Relations Board, Region 2, refused to issue complaints stating in a letter to Plaintiff on October 26, 1971, that:

"The evidence establishes that the company refused to rehire you as a crew member aboard the SS Green Ridge pursuant to a valid union security clause between it and the American Radio Association, AFL-CIO because of your failure to remit initiation fees after notification by the latter that such fees were due and not for any reason prohibited by the aforesaid Act. I, therefore, am refusing to issue a complaint in this matter."

15. Subsequent appeals to the General Counsel of the NLRB to reverse this ruling were denied.

16. The above determination by the National Labor Relations Board establishes that Plaintiff's claim has been previously adjudicated and determined.

PLAINTIFF'S CLAIM HAS BEEN PREVIOUSLY
ADJUDICATED AND DETERMINED BY THE
NEW YORK SUPREME COURT

17. On December 29, 1971, Plaintiff brought suit against the ARA in New York Supreme Court, Special Term, Part I, New York County. That suit was for the same claim as is set forth in the instant complaint. Judgment was rendered in favor of the ARA dismissing Plaintiff's action. (69 Misc. 2d 17 (1971)).

18. By reason thereof, Plaintiff's claim in this action has been previously adjudicated and determined.

PLAINTIFF HAS FAILED TO EXHAUST
HIS ADMINISTRATIVE REMEDIES

19. The Plaintiff's claim clearly falls under the terms and conditions of the Central Gulf - ARA contract which requires that:

"Any radio officer ... who feels that he has been unjustly ... discharged ... shall endeavor to have such grievance adjusted according to the ..."

grievance machinery provided. (Exhibit A, p. 39). If Plaintiff believed he had been wrongfully discharged he should have processed a grievance under the grievance machinery of the contract. To date he has not done so.

20. By this action Plaintiff has totally disregarded the established grievance procedures of the contract which are necessary to stable and harmonious labor relations.

21. The U.S. Supreme Court has ruled that an employee may not resort to court action before exhausting any grievance procedures. (Vaca v. Sipes, 386 U.S.171(1967)).

DEFENDANT REFUSED TO RE-HIRE PLAINTIFF
ON THE BASIS OF A VALID UNION SECURITY
CLAUSE. PLAINTIFF IS NOT ENTITLED TO
RE-EMPLOYMENT UNTIL SUCH TIME AS HE
MEETS HIS OBLIGATIONS PURSUANT TO THAT
UNION SECURITY CLAUSE.

22. The contract between Defendant and the ARA provides:

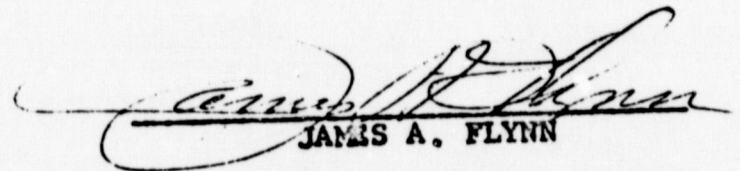
"The Company agrees, as a condition of employment, that all employees in the bargaining unit shall become and remain members of the Union thirty (30) days after date of hiring." (Exhibit A, p.23).

23. As a result of his failure to pay his union initiation fees - a necessary prerequisite of ARA membership - to re-employ Plaintiff prior to such payment would have placed Defendant in breach of the Central Gulf - ARA contract and subject to any damages resulting therefrom.

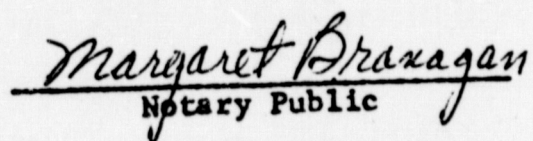
24. Plaintiff has failed to meet a basic condition of his continued employment. Defendant's refusal to re-employ Plaintiff was thus proper and in full accordance with its lawful contract with the ARA.

A60

WHEREFORE, for the reasons set forth above it is respectfully requested that Defendant's Motion For Summary Judgment be granted; or in the alternative, that the Court stay the instant proceeding pending Plaintiff's exhausting his administrative remedies under the grievance procedure of the Collective Bargaining Agreement between Defendant Central Gulf Lines, Inc. and the ARA.


JAMES A. FLYNN

Sworn to before me this
23rd day of November, 1973.


Notary Public

MARGARET BRANAGAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-5422500
Qualified in Kings County
Certificate Filed in New York County
Term Expires March 30, 1974

ACI

CENTRAL GULF STEAM CORPORATION
International Trade Mart
P. O. Box 53365
NEW ORLEANS, LOUISIANA 70150



RECEIVED
JUN 4 1971
CENTRAL GULF
STEAM CORP.
NEW ORLEANS, LA.

C
C
P
Y

*1603
Kil*
Mrs. Arebdo Faldemar
Radio Officers

Dear Mrs. Faldemar:

In accordance with your inquiry, I have advised a representative, that you are
advised that you will not be able to regain the vessel without proper assistance
once from the Union.

Yours truly

[Signature]
W.C. HYDEMAN, JR.
S.S. GREEN ISLAND

Ex. B



NATIONAL LABOR RELATIONS BOARD

REGION 2

Federal Building, Room 3614, 26 Federal Plaza

New York, New York 10007

Telephone 264-0300

October 26, 1971

Mr. Archie Paltzman
8725 16th Avenue
Brooklyn, New York 11214

Re: Central Gulf Steamship Corporation

Case No: 2-CA-12445

Dear Sir:

Your charge in the above-entitled case alleging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted.

The investigation does not tend to establish that the above-named Company violated the National Labor Relations Act as alleged by you. The evidence establishes that the Company refused to re-hire you as a crew member aboard the S.S. Green Ridge pursuant to a valid Union security provision between it and the American Radio Association, AFL-CIO because of your failure to remit initiation fees after notification by the latter that such fees were due and not for any reason prohibited by the aforesaid Act. I therefore am refusing to issue a complaint in this matter.

APPENDIX A

A 63

- 2 -

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D. C. 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D. C. by the close of business on November 9, 1971. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity of filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,
Sidney Danielson

Sidney Danielson
Acting Regional Director

Enc.

REGISTERED MAIL
R.R.R.

cc: General Counsel
National Labor Relations Board
Washington, D. C. 20570

Central Gulf Steamship Corporation
Attn: Mr. George Atkinson, Ass't. Traffic Mgr.
One Whitehall Street, New York, N.Y. 10004

Lorenz, Finn, Giardino & Lambos
Attn: Jacob Silverman, Esq.
21 West Street, New York, N.Y. 10006

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No.

21701

A 64

TITLE

District of *N.Y.*
ATTORNEYS

For Appellant:

*National Labor Relations Board,
Petitioners,*

*A. Norman Jones
Assistant General Counsel*

v.

*American Radio Association, Inc.
Respondents*

Respondents

For Appellee:

*Hermon E. Croft
H. Howard Crotin
32 Broadway*

DATE

FILINGS-PROCEEDINGS

CLERK'S FEES

Appellant

Appellee

An
Re
Emo
Re

Feb 19 1945 Filed petition

2 " record

24 " proof of service

23 " 24 copies, petition

23 " 24 copies, affidavits, petition

23 " brief, petitioners

27 " proof of service

Nov 1 " stipulation re argument

Nov 1 " " " "

28 " consent decree

(A true copy.

A. David Tensaw

Clerk

3 Vincent A. Cullen

	Page
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In the United States Court of Appeals for the Second Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

AMERICAN RADIO ASSOCIATION, AFFILIATED WITH THE
CONGRESS OF INDUSTRIAL ORGANIZATIONS, AND CARL
W. LUNDQUIST AND WILLIAM STEINBERG, ITS AGENTS,
RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

STATEMENT OF THE CASE

This case is before the Court upon the petition of the National Labor Relations Board, pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, Secs. 141, *et seq.*), herein called the Act, for enforcement of its order issued against respondents on April 19, 1949, following the usual proceedings in accordance with Section 10 (c) of the Act. The Board's Decision and Order are reported in 82 N. L. R. B. 1344. This Court has jurisdiction of the proceeding under Section 10 (e) of the Act, since the respondent, American Radio Association (herein called the ARA

A 66

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The factual and legal situation in the case at bar is sub- stantially identical with that which this Court pre- viously passed upon in <i>NLRB v. National Maritime Union of America</i> , 175 F. 2d 686, certiorari denied, 338 U. S. 954. There can be no question, therefore, but that the Board's conclusions as to the respondent's violations are proper and that its order is valid.....	12
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General Counsel's Exhibit 3.

- 412 Radio Officers on file at the nearest office of the Union. The Union shall inform the Company when a member employed as a Radio Officer is not in good standing.

(b) The names of all unemployed members of the Union shall be placed on the Union's unemployed lists at the various offices of the Union. The offices of the Union shall be the central clearing bureaus through which all arrangements in connection with the employment of Radio Officers shall be made. To guarantee, as far as practicable, the equal distribution of work among all members of the Union, vacancies shall be filled in the following manner:

- 413 Preference shall be given the Radio Officer longest unemployed who can present proof of previous employment and/or experience on a job similar to that which is offered, and who by mutual agreement is experienced and satisfactory.

(c) When filling vacancies, all Radio Officers shall produce an Official Assignment clearance from the Union.

(d) When any Radio Officer is rejected, the Company shall furnish a statement in writing to the Union, stating specifically the reason why he is not qualified, competent, or satisfactory to fill the job.

- 414 (e) In the event the Union is unable to furnish a Radio Officer to fill a vacancy, the provisions of this Section shall be waived in such cases and the Company shall be free to fill the vacancy from other sources, and the Union thereupon notified.

General Counsel's Exhibit 4.

TRANSPORTATION

415

Section 10.

(5)

(d) Vacancies shall be filled from the Union's office nearest to the port in which the vessel is located, and members of the Union are available for employment. The Company shall pay the Radio Officers sent to fill vacancies their wages, transportation first-class, and subsistence from the port of availability to the port of employment. Wages shall start on the date for which the Company has requested the Radio Officer be assigned for employment. If the Radio Officer so requested does not report on the date requested, his wages shall commence on the date he does report for duty.

416

(6)

General Counsel's Exhibit 4.

417

Copy

RADIO DIVISION M. E. B. A. ATLANTIC COAST
5 Beekman Street
New York, New York

April 9, 1948

Gentlemen:

Re: Dry Cargo Contract

Pursuant to the provisions of the Labor Management Relations Act of 1947 and Paragraph 1 (a) of the existing



A 68

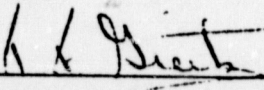
GENERAL SERVICES ADMINISTRATION
National Archives and Records Service

To all to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.

(seal)

Director, Federal Archives & Records Center

SIGNATURE 	
NAME Thomas F. Greitz	DATE Dec. 13, 1973
TITLE Director, Federal Archives & Records Center	
NAME AND ADDRESS OF DEPOSITORY FEDERAL ARCHIVES and RECORDS CENTER 641 Washington Street New York, NY 10014	

A 69

24737

NLRB ~~XXXXXXXX~~
ATTORNEYS

CLERK'S FEES

~~1. A true copy.~~

A. Laurel Turner

~~9 June 7 A. G. G. G.~~

A.70

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SECOND REGION

AMERICAN RADIO ASSOCIATION, AFL-CIO

and

THE RADIO OFFICERS UNION OF THE
COMMERCIAL TELEGRAPHERS UNION OF
AMERICA, AFL-CIO

Case Nos. 2-CB-1659
2-CB-1718
(Post 4-CB-291)
2-CB-1719
(Post 4-CB-296)

C O M P L A I N T

It having been charged by The Radio Officers Union of the Commercial Telegraphers Union of America, AFL-CIO, 1440 Broadway, New York, New York, that American Radio Association, AFL-CIO, 5 Beekman Street, New York, New York, herein called Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, hereinafter referred to as the Act, and the said cases having been consolidated for hearing, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Second Region, designated by the Board's Rules and Regulations - Series 6, as amended, Section 102.15, hereby issues this consolidated Complaint and alleges as follows:

1. (a) A copy of the Charge in Case No. 2-CB-1659 was served by registered mail upon Respondent on January 9, 1956.

(b) A copy of the Charge in Case No. 2-CB-1718 (former number 4-CB-291) was served by registered mail upon Respondent on August 16, 1955.

(c) A copy of the Charge in Case No. 2-CB-1719 (former number 4-CB-296) was served by registered mail upon Respondent on September 6, 1955. A copy of the Amended Charge in said case was served by registered mail upon Respondent on October 31, 1955.

2. T. J. Stevenson Co., Inc., Charles Kurz Company, Inc., Keystone Shipping Co., and Paco Tankers, Inc., herein respectively referred to as Stevenson, Kurz, Keystone, and Paco, are and at all times mentioned herein

have been shipping concerns engaged in operating their own ships and ships chartered by them in coastwise and foreign shipping.

3. At all times herein mentioned, each of the aforesaid shipping concerns has maintained its principal office and place of business at the address set forth below:

<u>Name of Company</u>	<u>Address</u>
Stevenson	Pier 34, North River, New York, N.Y.
Kurz	1000 Walnut Street, Philadelphia, Pa.
Keystone	1000 Walnut Street, Philadelphia, Pa.
Paco	100 West 10th Street, Wilmington, Del.

4. During the year 1955, each of the aforesaid shipping concerns derived a gross revenue in excess of \$100,000 from transporting by steamship, in the course and conduct of its business operations, articles and commodities in interstate and foreign commerce between various states of the United States and between the United States and foreign countries.

5. Each of the aforesaid shipping concerns is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. On or about June 16, 1955, Respondent entered into separate collective bargaining agreements with a substantial number of shipping concerns including Stevenson, Kurz, Keystone and Paco, relating to the hire, terms and conditions of employment of their radio officer employees; and since the aforesaid date Respondent has maintained in effect and enforced the said agreements.

8. From on or about June 16, 1955, to on or about September 5, 1956, said collective bargaining agreements, inter alia, conferred upon Respondent final authority to bar transfers of radio officer employees from one ship to another.

9. In accordance with, and pursuant to the terms of the aforesaid collective bargaining agreements, Respondent at all times material herein has maintained and operated, and now maintains and operates, exclusive hiring halls for the referral of all radio officer job applicants to the shipping concerns under contract with Respondent.

10. Pursuant to agreement, arrangement and understanding between Respondent and the shipping concerns under contract with Respondent, and/or with the consent or acquiescence of said shipping concerns, Respondent, in the operation of its hiring halls, did engage in the following acts, conduct and practices:

(a) During the period between on or about June 16, 1955 and on or about September 30, 1956, Respondent required radio officer job applicants who were nonmembers of Respondent to pay hiring hall registration fees in order to obtain job referrals to, or employment by, any of the shipping concerns under contract with Respondent.

(b) During the period between on or about June 16, 1955 and on or about May 31, 1956, Respondent required all radio officer job applicants, as a condition of job referral to, and/or employment by, any of the shipping concerns under contract with Respondent, to agree in writing to abide by and comply with the provisions of Respondent's constitution and shipping rules.

11. At all times material herein, Respondent's constitution and shipping rules have contained, inter alia, the following provisions and requirements:

(a) Members of Respondent, in order to be in good standing, must have paid all dues and assessments.

(b) Radio officers may not accept employment of any nature without clearance from Respondent.

(c) Members of Respondent are not entitled to clearance by Respondent for employment unless all their dues, assessments, or other financial obligations have been paid.

4.73 (d) Radio officers may not trade jobs or transfer from one job to another.

(e) When vessels change ownership, radio officers employed thereon must get new clearances from Respondent.

(f) Promotions to vacancies, where there is more than one radio officer on the job, are to be made from the remaining radio officers who, in Respondent's judgment, are competent and qualified and have complied with hiring hall rule and policies.

(g) Grievances with respect to assignments are to be adjudicated by Respondent.

(h) Radio officer assignment procedures may be changed by a majority vote of Respondent's members.

12. By the acts described above in paragraphs 8 and 10, and by each of said acts, Respondent did restrain and coerce, and is restraining and coercing, employees and prospective employees of Stevenson, Kurz, Keystone, Paco, and other employers in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

13. By the acts described above in paragraphs 8 and 10, and by each of said acts, Respondent did cause and/or attempt to cause, and is causing and/or attempting to cause, Stevenson, Kurz, Keystone, Paco and other employers to discriminate in regard to hire or tenure or terms or conditions of employment of their employees, or applicants and prospective applicants for employment, thereby encouraging membership in a labor organization, and Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

14. The activities of Respondent, described above in paragraphs 8 and 10, occurring in connection with the operations of Stevenson, Kurz, Keystone and Paco, described above in paragraphs 2, 3, 4 and 5, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and with foreign countries, and tend to lead to labor disputes

burdening and obstructing commerce and the free flow of commerce and constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

WHEREFORE the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Second Region, on this 26th day of December, 1956, hereby issues this consolidated Complaint against American Radio Association, AFL-CIO, Respondent herein:

Charles T. Douds

CHARLES T. DOUDS

Charles T. Douds, Regional Director
National Labor Relations Board
2 Park Avenue
New York 16, New York

A75

FORM NLRB 508
(7-5-51)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARDForm Approved
Budget Bureau No. 64-R003.5AMENDED

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Under a charge in this form, a labor organization, or its agents, or group acting on its behalf, is charged with having engaged in unfair labor practices. A charge based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

DO NOT WRITE IN THIS SPACE

CASE NO. 4-CB-296

DATE FILED 10-31-55

COMPLIANCE STATUS CHECKED BY:

mcl

INSTRUCTIONS: File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME

American Radio Association, CIO

ADDRESS

5 Beekman Street, New York, N. Y.

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 1(b) SUBSECTION(S) (2) and (1)(A) OF THE NATIONAL LABOR RELATIONS ACT, (List subsections)

AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about September 2, 1955, the above-named labor organization, by its agents, officers and representatives, have caused Paco Tankers, Inc. and/or Keystone Shipping Co. to refuse to hire Edwin D. Aber because of his non-membership in the above-named labor organization.

The above-named labor organization has entered into an illegal hiring arrangement pursuant to a contract with the above-named employers.

3. NAME OF EMPLOYER

Paco Tankers, Inc. and Keystone Shipping Co.

4. LOCATION OF PLANT INVOLVED (Street, City, and State)

(Paco)-----100 W. 10th St., Wilmington, Del.

(Keystone)-----1000 Walnut St., Phila., Pa.

(Ship involved: SS "Pine Ridge",
(White Fuel Docks, Castle Island,
(Boston, Mass.

5. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)

Owner and operator of ships

6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

Owner of ships (Paco)

Operator of ships (Keystone)

7. NO. OF WORKERS EMPLOYED

(Paco)

1000(Keystone)

8. FULL NAME OF PARTY FILING CHARGE

The Radio Officers Union of the Commercial Telegraphers Union

9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State)

1140 Broadway, New York 18, N. Y.

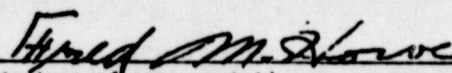
10. TEL. NO.

Lackawanna
4-5093

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY



(Signature of representative or person making charge)

Fred M. Howe

General Secretary-Treasurer

(Date)

(Title or office, if any)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

GPO 33-37888

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R003.5

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

DO NOT WRITE IN THIS SPACE

CASE NO.

4-CB-222-296

DATE FILED

9-6-55

INSTRUCTIONS: File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

COMPLIANCE STATUS CHECKED BY:

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME

American Radio Association, CIO

ADDRESS

5 Beekman Street, New York, N. Y.

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 140) SUBSECTION(S) (2) and (1)(A) OF THE NATIONAL LABOR RELATIONS ACT, (List subsections) AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about September 2, 1955, the above-named labor organization, by its agents, officers and representatives, have caused Charles Kurz Company, Inc. and/or Keystone Shipping Co. to refuse to hire Edwin D. Aber because of his non-membership in the above-named labor organization.

The above-named labor organization has entered into an illegal hiring arrangement pursuant to a contract with the above-named employers.

3. NAME OF EMPLOYER

Charles Kurz Company, Inc., and Keystone Shipping Co.

4. LOCATION OF PLANT INVOLVED (Street, City, and State)

1000 Walnut St., Phila. 7, Pa. (both companies)
(ship involved: SS "Pine Ridge", White Fuel Docks, Castle Island, Boston, Mass.)

5. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)

Owner and operator of ships

6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

owner of ships (Kurz)
operator of ships (Keystone)

7. NO. OF WORKERS EMPLOYED

(Kurz)
1000 (Keystone)

8. FULL NAME OF PARTY FILING CHARGE

The Radio Officers Union of the Commercial Telegraphers Union

9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State)

1140 Broadway, New York 18, N. Y.

10. TEL. NO.

Luckawanna
4-5093

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY Fred M. Howe
(Signature of representative of person making charge)

Fred M. Howe

General Secretary-Treasurer

9-6-55

(Date)

(Title or office, if any)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

A 77

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R003.5

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

When a charge is filed by a labor organization, or an individual or group, alleging that a labor organization, or an individual or group, is engaged in unfair labor practices, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

DO NOT WRITE IN THIS SPACE

CASE NO.

4-UB-291

DATE FILED

8-15-55

COMPLIANCE STATUS CHECKED BY:

INSTRUCTIONS: File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME

American Radio Association, CIO

ADDRESS

5 Beekman Street, New York, N. Y.

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(a) SUBSECTION(S) (2) and (1)(A) OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about August 12, 1955, the above-named labor organization, by its agents, officers and representatives, have caused Charles Kurz Company, Inc. and/or Keystone Shipping Co. to refuse to hire William A. Hanks because of his non-membership in the above-named labor organization.

The above-named labor organization has entered into an illegal hiring arrangement pursuant to a contract with the above-named employers.

3. NAME OF EMPLOYER

Charles Kurz Company, Inc., and Keystone Shipping Co.

4. LOCATION OF PLANT INVOLVED (Street, City, and State)

1000 Walnut St., Phila. 7, Pa. (both companies)
(ship involved: aboard S.S. Fort Fetterman, Esso Docks, Everett, Mass.)

5. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)

Owner and operator of ships

6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

owner of ships (Kurz)
operator of ships (Keystone)

7. NO. OF WORKERS EMPLOYED

(Kurz)
1000 (Keystone)

8. FULL NAME OF PARTY FILING CHARGE

The Radio Officers Union of the Commercial Telegraphers Union

9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State)

1140 Broadway, New York 18, N. Y.

10. TEL. NO.

Lackawanna
4-5093

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY

Fred M. Howe

(Signature of representative or person making charge)

Fred M. Howe

General Secretary-Treasurer

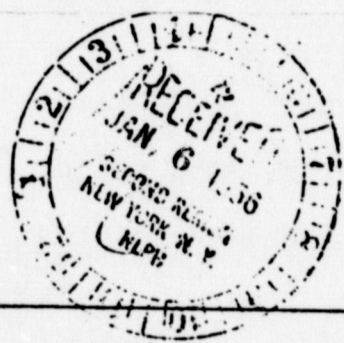
(Title or office, if any)

August 15, 1955

(Date)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

A78

FORM NLRB-908 (7-57)	UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS	Form Approved Budget Bureau No. 64-R003.5
Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.		DO NOT WRITE IN THIS SPACE CASE NO. <u>2-CB-1659</u> DATE FILED <u>1-6-56</u> COMPLIANCE STATUS CHECKED BY:
INSTRUCTIONS: File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		
1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT		
NAME <u>American Radio Association, AFL-CIO</u>		
ADDRESS <u>5 Lockman Street, New York, N. Y.</u>		
THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION (8b) SUBSECTION(S) <u>(2)</u> OF THE NATIONAL LABOR RELATIONS ACT, <small>(List subsections)</small> AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.		
2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) <p>On or about November 7, 1955 and December 7, 1955 the above named Labor Organization by its officers, agents and employees attempted to cause T. J. Stevenson & Co. to discharge Hyron E. Chandler who resides at 33 Mountain Avenue, Box 1, White Meadow Lake, Rockaway, N. J. because of his lack of membership in said labor organization.</p>		
		
3. NAME OF EMPLOYER <u>T. J. Stevenson & Co.</u>		
4. LOCATION OF PLANT INVOLVED (Street, City, and State) <u>Pier 24 North River, New York 13, N. Y.</u>		
5. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.) <u>Steamship company</u>	6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE <u>ships freight</u>	7. NO. OF WORKERS EMPLOYED <u>Approx. 250</u>
8. FULL NAME OF PARTY FILING CHARGE <u>Radio Officers' Union of the Commercial Telegraphers Union, AFL-CIO</u>		
9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State) <u>140 Broadway, Room 1568, New York, N. Y.</u>		10. TEL. NO. <u>LA 4-1093</u>
11. DECLARATION		
I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.		
BY <u>Fred M. Howe</u> <small>(Signature of representative or person making charge)</small> <u>Fred M. Howe, Secy. Treas.</u>		
<u>1/6/56</u> <small>(Date)</small>		
<small>(Title or office, if any)</small>		
<small>WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)</small>		

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,)
)
 Petitioner,)
)
 v.)
)
 AMERICAN RADIO ASSOCIATION, AFL-CIO,)
)
 Respondent.)

DECREE

The National Labor Relations Board having on April 11, 1957, issued an order against Respondent, American Radio Association, AFL-CIO, its officers, agents, successors and assigns, pursuant to a stipulation between American Radio Association, AFL-CIO, (hereinafter called Respondent) and Counsel for the General Counsel on behalf of the National Labor Relations Board dated January 25, 1957, and the parties having consented to the entry of a decree of this Court enforcing the order, and the Board having petitioned this Court for the enforcement of its order; upon consideration of said petition for enforcement and stipulation,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Respondent, American Radio Association, AFL-CIO, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Enforcing, applying, or continuing in effect such provisions, if any, of collective bargaining agreements with T. J. Stevenson Co., Inc., Charles Kurz Company, Inc., Keystone Shipping Co., Paco Tankers, Inc., or any other employer with which Respondent has a collective bargaining agreement which confer upon Respondent final authority to bar proposed transfers of the contracting companies' radio officer employees from ship to ship; or providing in any future agreement with any employer for such final authority on the part of Respondent:

(b) Operating the exclusive hiring halls provided for in the aforesaid collective bargaining agreements so as to require applicants for employment to agree in advance, as a condition of job referral for employment,

to abide by or comply with the provisions of Respondent's constitution and/or shipping rules, except to the extent authorized by Section 8 (a)(3) of the National Labor Relations Act, as amended, (hereinafter called the Act), or by Coast Guard or other governmental regulations.

(c) Operating the exclusive hiring halls provided for in the aforesaid collective bargaining agreements so as to require non-members of Respondent to pay registration fees as a condition of job referral or employment;

(d) In any like or related manner, causing or attempting to cause T. J. Stevenson Co., Inc., Charles Kurz Company, Inc., Keystone Shipping Co., Paco Tankers, Inc., or any other employer to discriminate against employees or prospective employees in violation of Section 8 (a) (3) of the Act;

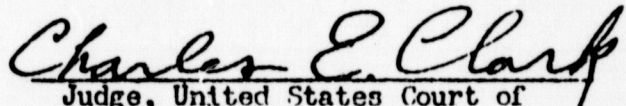
(e) In any like or related manner, restraining or coercing employees of T. J. Stevenson Co., Inc., Charles Kurz Company, Inc., Keystone Shipping Co., Paco Tankers, Inc., or any other employer in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in the Respondent as a condition of employment as authorized by Section 8 (a)(3) of the Act.

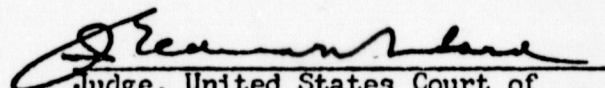
2. To the extent that it has not already done so, take the following affirmative action which the Board has found will effectuate the policies of the Act:

(a) Post in conspicuous places in its hiring halls, offices, and in all places where notices to members or applicants for employment are customarily posted, copies of the Notice attached hereto and made part hereof. Copies of said Notice to be furnished by the Regional Director of the National Labor Relations Board for the Second Region, New York, New York after being duly signed by an official representative of Respondent, shall be posted by Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that said Notices are not altered, defaced, or covered by any other material.

(b) Mail to the aforesaid Regional Director signed copies of the annexed Notice for posting, the Companies willing, at the offices, docks and on ships of T. J. Stevenson Co., Inc., Charles Kurz Company, Inc., Keystone Shipping Co., and Paco Tankers, Inc., in places where notices to employees are customarily posted. Copies of said Notice, to be furnished by the said Regional Director shall, after being signed as provided in paragraph 2 (a), be forthwith returned to the aforesaid Regional Director for posting.

(c) Notify the said Regional Director in writing, within ten (10) days from the date of this Decree, what steps the Respondent has taken to comply herewith.


Judge, United States Court of
Appeals for the Second Circuit


Judge, United States Court of
Appeals for the Second Circuit

Filed: July 19, 1957

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NOTICE TO ALL MEMBERS

of American Radio Association, AFL-CIO, Employees of and Applicants for employment with Employers with whom we have collective bargaining contracts. Pursuant to a Decree of the United States Court of Appeals, enforcing an Order of the National Labor Relations Board, based upon a stipulation providing for a consent decree in an appropriate circuit of the United States Court of Appeals and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT give effect to or enforce such provisions, if any, in our collective bargaining agreements with employers which give to us final authority to bar transfers of radio officers from ship to ship; and we will not include such provisions in any future collective bargaining agreement;

WE WILL NOT, in the operation of our hiring halls, require job applicants to agree, in advance, as a condition of job referral for employment, to abide by or comply with our constitution and/or shipping rules, except to the extent authorized by Section 8 (a) (3) of the Act or by Coast Guard or other governmental regulations.

WE WILL NOT, in the operation of our hiring halls, require non-members to pay registration fees as a condition of job referral for employment;

WE WILL NOT, in any like or related manner, cause or attempt to cause T. J. Steveson & Co., Inc., Charles Kurz Company, Inc., Keystone Shipping Co., Paco Tankers Inc. or any other employer to discriminate against employees or prospective employees in violation of Section 8 (a) (3) of the National Labor Relations Act.

WE WILL NOT, in any like or related manner, restrain or coerce employees or prospective employees of T. J. Steveson Co., Inc., Charles Kurz Co., Inc., Keystone Shipping Co., Paco Tankers, Inc., or any other employer, in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent that such rights may be effected by an agreement requiring membership in the Respondent as a condition of employment as authorized by Section 8 (a) (3) of the Act.

AMERICAN RADIO ASSOCIATION, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith, and not for delay and is restricted to grounds specified in Rule 53 of the Rules of this Court.

Archie Peltzman
 Archie Peltzman
 Petitioner Pro Se

April 9, 1973

APPENDIX 1A & 2A

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Megarry J.

Shepherd Homes Ltd. v. Sandham

[1971]

an application to the Lands Tribunal for whatever degree of expedition of hearing it is possible to afford.

*Motion for mandatory order dismissed.
 Cross motion for leave to apply to
 Lands Tribunal and staying the
 action in the meantime granted.*

Solicitors: *Theodore Goddard & Co., for Morgan, Bruce & Nicholas,
 Cardiff: Holman, Fenwick & Willan for Lean & Lean, Cardiff.*

K. N. B.

[COURT OF APPEAL]

EDWARDS v. SOCIETY OF GRAPHICAL AND ALLIED TRADES

[1968 E. No. 954]

1969 Nov. 25, 26, 27

Buckley J.

1970 July 15, 16, 17, 20; 30

Lord Denning M.R., Sachs and Megaw L.J.

Trade Union—Membership—Wrongful termination—Temporary member wrongfully deprived of union card and dismissed from union shop—Assessment of damages—On appeal, union's undertaking to grant full membership—Effect on estimate of future loss.

Damages—Earnings, loss of—Trade union—Wrongful exclusion from membership—Measure of damages—Basis of assessment—Actual financial loss plus sum for estimated future loss—Duty to mitigate damages by reasonable conduct.

Trade Union—Rules—Validity—Rule giving unfettered power to deprive temporary member of union card—No provision for natural justice or right of appeal—Loss of union membership affecting right to work—Whether void as in restraint of trade—Whether ultra vires.

A trade union covering a wide range of employment in the printing industry divided its membership into temporary and full members. Rule 18 (4) (h) provided that "temporary membership shall terminate automatically if the member becomes over six weeks in arrears" and sub-rule (4) (k) provided that "temporary members shall not have any right of appeal from any decision of their branch committee or the executive council." The plaintiff, a skilled craftsman in Grade J, had since 1960 been employed in a "100 per cent." union firm and was a temporary member of the union. Under a scheme operated by the union he authorised the deduction by his employers of his weekly union dues from his pay. By an oversight on the part of a union official the deductions were not made or paid over; but he was unaware of that until his local union official told him that by virtue of rule 18 (4) (h) he had ceased to be a member. Two applications for readmission

APPENDIX 1A & 2A

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Edwards v. S.O.G.A.T.

A were rejected by his branch committee; and his employers were required by threat of strike action to dismiss him. In the area where he lived, work in his grade was in short supply and the union operated virtually as the labour exchange for vacancies. He was unemployed for some months.

B In May, 1968, he began an action against the union claiming, inter alia, damages for breach of contract and a declaration that he was still a member. The union at first put in a defence that he had been properly excluded. Later the plaintiff obtained work in a non-union firm but was dismissed in May 1969, when he refused to do a task outside his contract terms. He again became unemployed and received unemployment pay. In April, 1969, the union admitted that he had at all times retained his temporary membership and thereafter supplied him with particulars of some vacancies; but as they either were or appeared to be of the lowest grade he did not take them up.

C On the trial of the action where the only issue was that of damages, Buckley J. awarded him the whole of his actual financial loss to the date of trial and a sum for future loss of earning capacity assessed on the formula applied in personal injury cases, namely, the yearly loss multiplied by ten, the total damages being £7,971.

D On the union's appeal against the quantum of damages, it was submitted for the first time that as the union rules provided no security for temporary members the damages should be nil or at least that nothing should be awarded for future loss. At a late stage in the appeal the union undertook to grant the plaintiff full membership, a status which gave security in membership and under normal union practice would give some priority for suitable vacancies:—

E *Held*, allowing the appeal by reducing the total award to £3,500, (1) that damages for the admitted breach of contract should consist of (a) the plaintiff's actual loss, viz. the difference between what he would have earned if he had remained in the union shop and what he in fact received in wages and benefit to the date of assessment, less such amount as the union might prove was due to his failure to act reasonably to mitigate the damage; and (b) an estimate of his future loss of earning capacity attributable to the withdrawal of his union card.

F (2) That the plaintiff was entitled to the whole of his actual loss, for the union had not proved that he did not act reasonably in mitigation of the damage.

G (3) That in estimating the future loss the court had to take into account the union's grant of full membership, albeit at a late stage in the proceedings, as a factor which should enhance his prospects of regaining his full earning capacity in a union shop and thereby reduce the damages awarded on the basis of only temporary membership, but in view of the union's previous conduct should balance against that factor his chance of getting the help which the union normally gave to full members and its control of vacancies in the industry.

R *Per* Lord Denning M.R. and Sachs L.J. The assessment of future loss of earning capacity in an action for a trade union's breach of contract vis-à-vis a member is in some respects not analogous to the assessment of future loss in cases of personal injury for the union can mitigate future loss by restoring membership (post, pp. 378a-c, 379c-d).

(4) (*Per* Lord Denning M.R. and Sachs L.J.) That the provisions of rule 13 (4) which gave the union an unfettered

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Edwards v. S.O.G.A.T.

[1971]

right capriciously and arbitrarily to withdraw temporary membership without regard to the rules of natural justice were invalid because (*per* Lord Denning M.R.) such rules are an interference with a man's right to work which the law will protect, and (*per* Sachs L.J.) are ultra vires and an unlawful restraint of trade, a fortiori in an industry where trade union membership is a prerequisite for employment (post, pp. 377A-C, 382B-383B).

Award of Buckley J., *infra*, pp. 357, 365D-E; [1970] 1 W.L.R. 379; [1970] 1 All E.R. 905 varied.

The following cases are referred to in the judgment in the Court of Appeal:

- Addis v. Gramophone Co. Ltd.* [1903] A.C. 488, H.L.(E.).
Cockburn v. Alexander (1848) 6 C.B. 791.
Dickson v. Pharmaceutical Society of Great Britain [1970] A.C. 403; [1958] 3 W.L.R. 286; [1958] 2 All E.R. 686, H.L.(E.).
Faramus v. Film Artistes Association [1964] A.C. 925; [1964] 2 W.L.R. 126; [1964] 1 All E.R. 25, H.L.(E.).
Lavarack v. Woods of Colchester Ltd. [1967] 1 Q.B. 278; [1966] 3 W.L.R. 706; [1966] 3 All E.R. 683, C.A.
Murphy v. Stone-Wallwork (Charlton) Ltd. [1969] 1 W.L.R. 1023; [1969] 2 All E.R. 949, H.L.(E.).
Nagle v. Feilden [1966] 2 Q.B. 633; [1966] 2 W.L.R. 1027; [1966] 1 All E.R. 689, C.A.

The following additional cases were cited in argument in the Court of Appeal:

- Abbott v. Sullivan* [1952] 1 K.B. 189; [1952] 1 All E.R. 226, C.A.
Bonsor v. Musicians' Union [1954] Ch. 479; [1954] 2 W.L.R. 687; [1954] 1 All E.R. 822, C.A.
Brace v. Calder [1895] 2 Q.B. 253.
British Guiana Credit Corporation v. da Silva [1965] 1 W.L.R. 248, P.C.
Clayton Greene v. De Courville (1920) 36 T.L.R. 790.
Curwen v. James [1963] 1 W.L.R. 748; [1963] 2 All E.R. 619, C.A.
Dawkins v. Antrobus (1881) 17 Ch.D. 615, C.A.
Jackson v. Hayes Candy & Co. Ltd. [1938] 4 All E.R. 587.
Jenkins v. Richard Thomas & Baldwins Ltd. [1966] 1 W.L.R. 476; [1966] 2 All E.R. 15, C.A.
Lawlor v. Union of Post Office Workers [1965] Ch. 712; [1965] 2 W.L.R. 579; [1965] 1 All E.R. 353.
Lee v. Showmen's Guild of Great Britain [1952] 2 Q.B. 329; [1952] 1 All E.R. 1175, C.A.
Martin v. Amalgamated Society of Painters and Decorators, The Times, July 10, 1965.
Morgan v. Fry [1968] 1 Q.B. 521; [1967] 3 W.L.R. 65; [1967] 2 All E.R. 386.
Padfield v. Minister of Agriculture, Fisheries & Food [1968] A.C. 997; [1968] 2 W.L.R. 924; [1968] 1 All E.R. 694, C.A. and H.L.(E.).
Rookes v. Barnard [1964] A.C. 1129; [1964] 2 W.L.R. 269; [1964] 1 All E.R. 367, H.L.(E.).
Russell v. Norfolk (Duke of) [1949] 1 All E.R. 109, C.A.
Weinberger v. Inglis [1919] A.C. 606, H.L.(E.).
Wood v. Woad (1874) L.R. 9 Exch. 190.
Yellon v. Eastwoods Froy Ltd. [1967] 1 W.L.R. 104; [1966] 3 All E.R. 353.

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National Agreement with
Steamship Co. 72 18-23, 25-27
39-42, 65-67
June 16, 1969

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given the Radio Officer or Radio-Electronics Officer longest unemployed who is qualified, competent and satisfactory. The Union, in furnishing Radio Officers to the Company, through the facilities of its employment offices, will recognize such preferences and refer Radio Officers or Radio-Electronics Officers to the Company in accordance therewith. The Union agrees to maintain, administer, and operate its employment offices in accordance with law, and assume sole responsibility therefore.

D. Normally no transfer of a continuously employed Radio Officer or Radio-Electronics Officer from one ship to another shall be made, except that a transfer may be permitted upon advance negotiation and written agreement between the Company and the Union on an individual case basis with arbitration in accordance with Section 19(d) and (e) herein if consent to such transfer is unreasonably withheld.

E. When any Radio Officer or Radio-Electronics Officer is rejected for employment or discharged from employment, the Company shall furnish a statement in writing to the Union employment office stating specifically the reason why he is not qualified, competent, or satisfactory to fill a job. Any dispute arising from the discharge or rejection of a Radio officer or Radio-Electronics Officer shall be settled in accordance with Section 19 and the terms of settlement shall include a provision as to the payment of wages from the date of discharge or rejection. This paragraph shall also apply in the case of a refusal by a Company to employ a Radio Officer and/or Radio-Electronics Officer duly assigned in accordance with the provisions of this Agreement.

Wages shall be deemed to include subsistence and room allowance for the period involved.

A Radio Officer or Radio-Electronics Officer who is discharged or rejected for cause shall be given, on the date of discharge or rejection, a written statement advising of the discharge or rejection and an explanation of the reasons for the discharge or rejection. Failure to furnish such written statement or the furnishing of a statement which fails to set forth the facts shall presumptively establish that the Radio Officer and/or Radio-Electronics Officer has been discharged or rejected without just cause. Such statement may be furnished to the Union if the Radio Officer and/or Radio-Electronics Officer is not available.

F. When reporting to the Company to fill vacancies, all Radio Officers or Radio-Electronics Officers shall produce an official assignment clearance from the Union employment office.

It is agreed that any Radio Officer or Radio-Electronics Officer dispatched by the Union Employment Office at the request of and reporting to the Company on the date specified, and is not rejected for just cause, shall be on the payroll starting with the date of dispatch which shall be the same date he is required to report.

G. In the event the Union employment offices are unable to furnish a Radio Officer or Radio-Electronics Officer to fill a vacancy, the provisions of this section shall be waived in such cases and the Company shall be free to fill the vacancy from other sources, provided that the Union Employment office is thereupon notified of such assignment.

H. There shall be no discrimination because of race, creed, color, national origin or age. Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected

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by, membership or non-membership in the Union; provided, however, that nothing herein shall have any effect on the provisions of Section 4(b) of this Agreement.

I. Appeals. A permanent Appeals Board shall be established consisting of four (4) members, two (2) of whom shall be appointed by the Union and two (2) by the [Company or Ass'n]. Substitutes may be appointed at any time upon notice from either party to the other.

Any Radio Officer or Radio-Electronics Officer who feels that he has been improperly excluded from any one of the priority groups established under this Article may file a written complaint with such Appeals Board. Such complaint shall be addressed to the Secretary of the Appeals Board in care of the Maritime Service Committee, Inc., 11 B'way, N.Y.C., or American Maritime Ass'n, 17 Battery Place, N.Y.C., or Pacific Maritime Ass'n, 16 California Street, San Francisco, Calif., or the respective Independent Company, at its main address. Copy of the complaint shall also be addressed to the Union at its National Offices, 270 Madison Avenue, New York, New York 10016. The Secretary of the Board shall promptly call a meeting of said Appeals Board to act upon said complaint and said Board shall issue its decision within 24 hours after said meeting.

In the event a majority of the Board cannot agree upon a decision, the Board shall select a person who will become a fifth member of the Board until a decision is reached. If the Board cannot agree on the fifth member within 24 hours, the Secretary of Labor will be requested to appoint such fifth member. The fifth member will become the Chairman of the Board during the discussion of the complaint before it. The Board, augmented by this fifth member, shall render a decision as promptly as possible and the Board's decision, or that of

any three (3) members of the Board, shall be binding upon all parties concerned.

Decisions of the Board shall be transmitted in writing to all Union-operated employment offices and to the particular Radio Officer or Radio-Electronics Officer making the appeal.

The Company and the Union shall bear equally the expenses of the fifth member of the Board.

The Appeals Board shall be furnished as promptly as possible with a list of Radio Officers and Radio-Electronics Officers in Group 1 and a list of those in Group 2 who have either shipped or registered after June 15, 1963.

J. The Union shall post a copy of this Section 4 in every Union-operated employment office in places where notices to applicants for employment are customarily posted. The Company shall post a copy of this Section 4 in places where notices to employees and applicants for employment are customarily posted.

K. The parties understand that the provisions of this section are in compliance with federal and state laws. If any part hereof is held to be in conflict therewith, the parties shall negotiate provisions to the extent necessary to insure compliance, and to the extent that such provisions are so held to be in conflict, they shall be deemed inapplicable, but only with respect to the particular state involved, or the Federal Government, as the case may be.

L. The jointly negotiated Assignment Rules, i.e., the Assignment Rules in effect as of June 16, 1969, as approved by the parties hereto, shall be deemed a part of this Agreement. Changes to said Rules shall be incorporated into this Agreement, upon mutual agreement in writing between the parties. The Employment Office Committee provided

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below shall have the responsibility for the maintenance and operation of the Employment Offices as provided herein.

In order to partially defray the costs and expenses of the operation and maintenance of said Employment Offices, the Company shall pay 30¢ per man per day to the Employment Office Committee, and said Committee shall apply the money so paid to the costs and expenses of operating and maintaining the Employment Offices.

A Joint Employment Office Committee comprised of representatives of the various Company groups (MSC, AMA, TSC, PMA) and of the Union, with the Company representatives and the Union representatives having an equal number of votes, shall be established. Such Committee shall have authority to receive the aforementioned contributions and hold them in an independent bank account, to direct such payments as it may deem appropriate to assist in the maintenance of an Employment Office procedure which will be adequate to protect the interests of Radio Officers and Radio-Electronics Officers and to meet the requirements of the Company in this respect. The Committee shall have the authority to appoint an Administrator to carry out its decisions. In the event the Committee deadlocks, the matter at issue shall be resolved through the grievance machinery provided in Section 19.

The establishment of the Joint Employment Committee is hereby confirmed and the Company agrees to continue its contribution to said Plan of 30¢ per man per day on Company payroll (which was part of the monies available under the Agreement for allocation by the Union). The monies so contributed shall be available for the sole and exclusive purpose to defray the cost and expenses of the operation and maintenance of the ARA employment offices from which the Company ob-

tains its covered employees in accordance with the provisions of the New Contract.

UNION SECURITY

Section 4. (b) The Company agrees, as a condition of employment, that all employees in the bargaining unit shall become and remain members of the Union thirty (30) days after date of hiring.

(c) SERVICE FEES. Notwithstanding any other provision in the Agreement, it shall be a condition of employment, and/or registration for employment, that all employees and prospective employees covered in this agreement who are not members of the Union, shall be required to pay a service fee of \$70.00 or such other amount as may hereafter be agreed upon, at the time of registration and no more frequently than on a calendar quarterly basis thereafter, payable in advance, in consideration of the services performed by the Union, including the negotiation and enforcement of collective bargaining agreements, the maintenance of employment offices, and other Union activities performed for the general interest of all employees in the bargaining unit. The failure to pay such quarterly service fees shall be sufficient ground for removal from the Union assignment list and shall nullify any prior assignment therefrom.

MEDICAL EXAMINATIONS

Section 5. [Except PMA] In the event that a Radio Officer or Radio-Electronics Officer is denied employment or is discharged for medical reasons and there is a conflict between the Company's medical doctor and the Union's medical examiner, the parties shall refer the matter to the United States Public Health Service on the issue as to whether the Radio Officer and/or Radio-Electronics Officer is fit for duty or not and its decision shall be final.

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Where in the case of such conflict the Radio Officer and/or Radio-Electronics Officer is not eligible for examination by the U.S.P.H.S., the medical service available to the ARA Pension and Welfare Plan shall make the final decision on such issue.

It is clearly understood that no Radio Officer or Radio-Electronics Officer shall be disqualified from employment under this Section who may have a physical defect which has not prevented him from performing his duties in the past.

[Applies to PMA also.] Where a Radio Officer or Radio-Electronics Officer is required to incur unusual transportation expenses in connection with his physical examination because of special needs of the Company, his transportation expenses will be reimbursed.

PMA: Physical Examinations. Radio Officers may be required to undergo a medical examination, such examination to be conducted by a U. S. Public Health physician or a private physician to be mutually agreed to by the parties.

The purpose of the medical examination is to determine that the Radio Officer is free from communicable diseases and able to do the work required of a Radio Officer.

It is clearly understood that no Radio Officer shall be disqualified from employment under this section who may have a physical defect which has not prevented him from performing his duties as a Radio Officer in the past. Should a Radio Officer be designated as unfit for employment by a U. S. Public Health physician, then the Union shall have the right to have the case reviewed by its own medical examiner. Should the Union's medical examiner certify the Radio Officer to be free from communicable disease and able to perform the duties of a Radio Officer, then the Company and the Union will agree upon a suitable outside medical

examiner whose independent judgment will be determining on the facts at issue, and his decision shall be final and binding. The expense of outside consultant will be borne equally by the Company and the Union.

[Applies to PMA also.] Where a Radio Officer or Radio-Electronics Officer is required to incur unusual transportation expenses in connection with his physical examination because of special needs of the Company, his transportation expenses will be reimbursed.

INSURANCE

Section 6. The Union shall take out insurance which will protect the Company, steamship owner, agent, charterer, operator and subsidiary or affiliated companies against any claim, loss, damage, or liability for loss of life or injury occurring to a representative of the Union while on the property or while on board a vessel of any of the above-mentioned companies while said property or said vessel is owned, chartered, or leased, and shall furnish satisfactory evidence of such insurance for the benefit of the Company, steamship owner, agent, charterer, operator and subsidiary or affiliated companies.

PASSES

Section 7. The Company shall permit, by the distribution of passes, while such insurance is in effect the authorized representatives of the Union to board the vessels described in Section 1 hereof for the purpose of Union business with Radio Officers or Radio-Electronics Officers employed thereon; provided that the Union representatives shall not violate the provisions of this Agreement or interfere with or retard the work of the vessel, subject to penalty with or revocation of passes. Passes issued to Union representatives shall contain no provision seeking to secure a waiver of any liability the Company may have to such pass holder. In so far as possible the Union's business on board such vessel shall be accomplished by its representative within two hours.

GENERAL

Section 8. The Company accepts the principle of continuous employment for Radio Of-

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Officers and/or Radio Electronics Officers and agrees not to discharge any Radio Officer and/or Radio Electronics Officer when vessels are in port if the vessel is manned by four or more licensed officers, provided it shall be at the option of the Company to discharge such Radio Officer and/or Radio Electronics Officer after the vessel has been in port for a period exceeding twenty-one (21) days; provided further, when a vessel is manned by less than four (4) licensed officers the Company agrees not to discharge any Radio Officer and/or Radio Electronics Officer for a period of ten (10) days, after which time the Company shall have the option of discharge. No Radio Officer and/or Radio Electronics Officer shall be laid off over a Saturday, Sunday, or holiday. It is the intention of this section that when a vessel is manned by licensed officers, regardless of their capacity or designations (e.g., "watchman," etc.), this section shall apply.

Section 9. Subsistence allowance amounting to \$10.50 per day (\$2.00 for breakfast, \$3.00 for lunch, \$5.50 for dinner) and room allowance of \$10.50 per day shall be paid to each Radio Officer or Radio Electronics Officer if board and living quarters are not furnished when in port.

These respective amounts may be adjusted to meet reasonable expenses incurred when substantiated by vouchers. The standard of reasonableness for the respective port will be established by mutual agreement between the Parties.

Room allowance shall be paid when vessel is in port and:

1. When heat is not furnished in cold weather.

2. When hot water is not available in the Radio Officer's or Radio Electronics Officer's quarters for a period of twelve (12) or more consecutive hours.

3. When the Radio Officer's or Radio Electronics Officer's quarters have been painted and paint is not absolutely dry and other suitable quarters are not furnished aboard.

4. At all times when vessel is on drydock overnight unless lodging with all facilities including heat, light, hot and cold running water and sanitary facilities are provided aboard the vessel.

5. When linen is not furnished upon the Radio Officer's or Radio Electronics Officer's request prior to 6 P.M. on the day he joins the vessel.

6. When vessel is being fumigated and not cleared before 9 P.M.

TRANSPORTATION

Section 10. (a) Radio Officers or Radio Electronics Officers when transported by the Company during the course of their employment, shall be provided with first-class transportation by rail and with subsistence at the rate of ten dollars (\$10.00) per day in addition to their regular monthly wages and expenses incurred in travelling. When travelling at night is involved, a lower berth [PMA: roomette] shall be provided.

(b) In the event that a vessel terminates a voyage in a port other than the original port of engagement, first-class transportation, including berth ([PMA: roomette] when necessary, wages and subsistence at \$10.00 a day back to the port of original engagement shall be furnished to each Radio Officer or Radio Electronics Officer. At the request of the individual Radio Officer or Radio Electronics Officer each such officer shall be paid in cash the amount equivalent to the full cost of first-class jet air transportation, including tax, be-

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and insignia, when required, shall be furnished by the Company.

(b) Radio Officers and/or Radio Electronics Officers shall be granted the same privileges with respect to laundering of uniforms as accorded other licensed officers.

ARRIVAL, DEPARTURE AND PORT TIME

Section 16. Arrival. A vessel shall be deemed to have arrived in port thirty (30) minutes after it has anchored or moored at or in the vicinity of a port (or other place of loading or discharging) for the purpose of loading or discharging cargo, ballast and containers (whether empty or not), passengers or mail; undergoing repairs; bunkering alongside a dock; fumigation; layup, awaiting orders or berth. This provision shall not apply to emergency anchorage or mooring solely for reasons of safety.

The term "anchored or moored at or in the vicinity of a port (or other place of loading or discharging)" shall cover any situation where the facts of the situation disclose that the vessel has as its immediate destination, the specific port or other place of loading or discharging.

Section 17. Departure. A vessel shall be deemed to have departed and port time terminated thirty minutes prior to the time when mooring lines are cast off or anchor is aweigh for the purpose of putting to sea directly.

Section 18. Port time shall not apply while awaiting pilot, quarantine, pratique, safe weather or tide; it is agreed, however, that in the case of awaiting pilot, quarantine and pratique, any such exception shall not apply where the delay is because the vessel is awaiting a berth and in any event shall only apply where the delay is caused by the arrival of the vessel during hours that the officials passing

quarantine or pratique are not on duty and only for such limited period.

GRIEVANCE PROCEDURE

Section 19. (a) There shall be no strikes, lockouts, or stoppages of work during the period of this Agreement for any cause; provided, however, that this no-strike clause shall not apply if the Company becomes delinquent in pension, welfare or vacation payments, allotments or wages. There shall be no reduction of manning during the life of this Agreement except by mutual consent of the Parties.

No Radio and/or Radio-Electronics Officer shall be required to work under conditions which may endanger his health or safety, or be required to either work behind a picket line or cross a picket line. The refusal of a Radio Officer and/or Radio-Electronics Officer to perform work in accordance with this paragraph shall not be cause for discharge and any action taken by a Radio Officer and/or Radio-Electronics Officer or the Union in accordance with this paragraph shall not be deemed to constitute a violation of Section 19(a) herein.

(b) Any Radio Officer and/or Radio-Electronics Officer who feels that he has been unjustly treated or discharged, or has been subject to unfair consideration shall endeavor to have such grievances adjusted according to the following procedure:

1. Presentation of the complaint to the Master of the vessel.
2. Appeal to the shore representative of the Company.
3. A joint hearing before the local representative of the Union and the Company.

In the event a dispute under (b) is not resolved, it shall be referred, upon the request of the Union or the Company, to the Licensed Personnel Board for final decision.

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(c) All disputes, other than those referred to in (a) above, relating to the interpretation or performance of this Agreement which may arise between the Union and the Company shall, upon the request of the Union or the Company, be determined by a Board consisting of two persons appointed by the Union and two persons appointed by the Company. A statement of the dispute shall be made to the Board in writing at a joint meeting which shall be held within forty-eight (48) hours from the time when the services of the Board are invoked (Saturdays, Sundays and holidays excluded), and the other party shall have an opportunity to submit a written reply thereto. The Board shall endeavor to adjust the dispute, failing which, it shall, within seventy-two (72) hours from the time of the beginning of the first meeting of the Board on the matter, submit the dispute to the Arbitrator mutually agreed upon by the Parties.

- (d) 1. The Board shall establish such rules for procedures as it may deem necessary.
2. The decision of a majority of the Board or of the Arbitrator, as the case may be, shall be final and binding upon the parties.
3. Any expense of arbitration and any expense incurred by the Board shall be equally divided between the parties.
4. Unless some other place is mutually agreed upon, the Board shall meet at the ARA Pension and Welfare Plan, 270 Madison Avenue, in New York promptly upon written notice from either the Union or the Company.
5. The decision of the Arbitrator shall be rendered within fifteen (15) days.

(e) is appointed arbitrator by mutual agreement for a six month period, renewable for six month periods by mutual consent of the parties. Either party thirty days prior to the semi-annual anniversary date of his appointment may request his removal in writing by notice to the other party and to the Arbitrator. In such event or in the event the arbitrators should resign or for other reasons be unable to perform his duties, the parties shall request George Meany to designate five names from among which each party shall have the right to strike two. One of the remaining names shall be designated as the Arbitrator by Mr. Meany, to serve unless terminated as provided above. In the event of a request for removal or his resignation, the incumbent arbitrator shall continue to serve until his successor has been appointed.

- (f) 1. The Union or the Companies may, in addition

to the above, have the right, on 24 hours notice, to request the convening of a Licensed Personnel Board to consider a grievance.

2. The Licensed Personnel Board meeting will be held at the ARA Pension and Welfare Plan, 270 Madison Avenue, New York City, N.Y., at 10:00 A.M. on whatever date is fixed unless the parties agree on some other time or place.

3. The Arbitrator will serve as Chairman at any meeting of the Licensed Personnel Board. During the course of the Licensed Personnel Board meeting, the Arbitrator will make no decisions but merely guide the parties as Chairman. If the parties can mutually agree on the disposition of the grievance, it shall be deemed settled.

4. In the absence of such final disposition by mutual agreement before a Licensed Personnel Board, the Arbitrator will then, at the request of either party, have jurisdiction of the case to render a decision as arbitrator. Either party may request a further opportunity to present additional evidence for the purpose of the arbitration proceeding, which request shall be granted or denied in the discretion of the Arbitrator. In the absence of any such request, the Arbitrator is to proceed to an arbitration award without the need of any further hearings.

5. It is the desire and purpose of the parties that all grievances, available for the Licensed Personnel Board or arbitration, be disposed of as promptly and expeditiously as possible.

(g) The parties shall establish a Review Committee consisting of three members designated by the Employers and three members designated by the Union. This Committee shall be available to consider the presentation of requests that, in the interest of the industry, an individual should not be referred for employment by the Union nor be employed by the Company.

Among the reasons to be considered by the Committee are the following:

- (1) Habitual drunkenness;
- (2) illegal possession of a lethal weapon;
- (3) mental illness;
- (4) frequent and unreasonable absence from duty.

Before the Committee acts on any com-

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plaint, the affected individual shall receive written notice of the complaint, an opportunity to appear before the Committee at the time the complaint is heard, and an opportunity to cross-examine witnesses and to present witnesses on his own behalf.

After the conclusion of the hearing, the Review Committee shall act through a majority vote of its members. Said decision shall be final and binding except that the individual adversely affected shall have the right to appeal from a decision of the Review Committee to the contract Arbitrator whose decision shall be final and binding on all parties.

HOURS OF WATCH

Section 20. (a) Passenger Vessels. Hours of watch shall not exceed eight (8) hours in any one day for each Radio Officer or Radio Electronics Officer.

(b) On vessels which maintain continuous radio watch, such watches shall be kept by not less than three Radio Officers and/or Radio Electronics Officers.

Section 21. (a) Freight Vessels. Hours of watch shall not exceed a total of eight (8) hours in any one day. Each Day shall commence at midnight (Ship's Time). Normal watch on each voyage shall begin with the first watch after departure and terminate with the last watch on arrival. Hours of watch shall be fixed by the Master at the commencement of each voyage between 9 A.M. and 9 P.M. and shall not be changed for the duration of the voyage. All work required outside the regular watch hours set by the Master at the commencement of the voyage shall be payable as overtime. Not more than three (3) watch periods shall be prescribed with a minimum of two (2) hours for any watch.

(b) When three Radio Officers are carried, no special night overtime provision shall apply.

Section 22. (a) Radio Officers and/or Radio Electronics Officers shall perform all duties incident to the operation and maintenance of all radio and/or electronic external communications devices on vessels operated by the Company. All radio and/or electronic external communications devices, described in Sections 2 and 3 including Radiotelephone, Radio Facsimile, Radio Teletype, communications computers or any other such devices, when carried shall be located only in the Radio Room and shall be operated, maintained and repaired only by the Radio Officer and/or Radio Electronics Officer. (Navigation computers and other electronic navigational equipment shall be located in or in the vicinity of the Radio Room including the bridge, but regardless of location shall be maintained and repaired only by the Radio Officer and/or Radio Electronics Officer.)

(b) Radio Officers and/or Radio Electronics Officers shall not be required to perform any duties other than those required for the operation and maintenance and repair of the vessel's licensed radio station and other equipment and devices as outlined in Sections 2, 3 and 22(a) except in an emergency involving the safety of life and/or property. Emergency shall be defined to mean a bonafide distress situation.

Radio Officers and/or Radio Electronics Officers may also be required to maintain and make repairs to the Radio Compass when the services of Radio Compass experts are not available; provided that under such circumstances, they shall not be held responsible for the efficiency or accuracy of the Radio Compass.

Radio-Electronics Officers may be required to maintain and make repairs to other electronic devices, carried, pursuant to the provisions of

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(i) In the case of all new construction, conversion or major overhauling which includes quarters of the crew, the Company agrees that prior to the letting of such construction contracts, it will submit to the Union the proposed plans covering the quarters to afford the Union a reasonable period of time to examine the same and submit its comments or objections if any.

On all new construction and major reconversion, more complete information shall be furnished to the Union with respect to all equipment under the jurisdiction of the Union, including receivers.

(j) PMA: Cargo shall not be stowed so as to block entrance to or exit from the Radio Room.

Section 28. The Radio Room and Radio Officer's or Radio Electronics Officer's quarters shall be cleaned daily and painted when necessary, but in any event painted at least once a year, bunks made up and linen and towels changed by personnel other than the Radio Department in the same manner as these functions are performed for the other ship's licensed officers. Linen and towels shall be changed at least weekly, and in non-air conditioned vessels in the tropics, twice a week. When linen is not changed as indicated, each Radio Officer or Radio Electronics Officer shall be compensated by two hours' premium payment for each week (or half-week, when appropriate).

The Radio Officer or Radio Electronics Officer shall also receive an adequate supply of towels, and blankets of good quality and adequate size.

The deck of the Radio Room shall be cleaned and washed daily by personnel other than the Radio Department, and if such daily cleaning and washing is not performed then the Radio

Officer or Radio Electronics Officer shall be paid one (1) hour's premium pay for each day at sea that this work is not performed.

Section 29. In port when repair work, such as chipping, welding, hammering and/or pounding, or other noises of a similar nature are being performed in or around the Radio Officer's or Radio Electronics Officer's quarters at night, on ship or on dock (excluding operations involving cargo or stores), he shall be entitled to lodging allowance of \$10.50 per night, provided he has notified the Master or Officer in charge to arrange other comparable quarters away from the noise. It is further understood that a temporary breakdown for minor repairs of less than three hours shall not subject the vessel to any lodging penalties.

VACATION PLAN

Section 30. (a) The Agreement and Declaration of Trust establishing the ARA and ARA-PMA Vacation Plan, is extended through June 15, 1972.

(b) Effective as of June 16, 1965, Radio Officers shall be eligible for vacation benefits of 5 days of vacation for each thirty (30) days of dry-cargo ship employment with one or more of the companies, of which at least one day must have occurred on or after June 16, 1965, and for which vacation benefits have not been paid prior to this date: Chief Radio Officers and Radio Electronics Officers and First Assistants shall receive 6.25 days for each 30 days of employment. A pro-rata vacation benefit shall be given for a period of less than 30 days provided there is a minimum of 30 days employment. The amount of vacation benefits shall be pro-rated in accordance with the average base pay received by the employee in the period used for computing eligibility. If employment includes service with Dry-Cargo and/or Passenger vessels and Tankers, the

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vacation benefits shall be pro-rated. All days of vacation shall be computed as days of work for the purpose of determining vacation benefits, for days of employment on or before June 15, 1969.

(c) (1) for all covered employment on and after June 16, 1969, the vacation benefit shall be 9 days for each 30 days of said employment;

(2) for all covered employment on and after June 16, 1970, the vacation benefit shall be 9½ days for each 30 days of said employment;

(3) for all covered employment on and after June 16, 1971, the vacation benefit shall be 10 days for each 30 days of said employment.

With respect to employment on and after June 16, 1969, days of vacation accrued since the aforesaid schedule includes such additional credits.

(4) Each Radio Officer or Radio Electronics Officer represented by the Union employed on the container vessels of the Company, in addition to all other vacation benefits provided in this Agreement shall be entitled to four additional days of vacation for each thirty days of continuous employment on said vessels, plus a pro-rata for additional such continuous employment beyond thirty days. Such additional days of vacation shall not be computed as days of work for purpose of computing ensuing vacation benefits.

(d) Radio Officers and Radio Electronics Officers on passenger ships shall have the right after six (6) months of continuous employment to have a special leave of absence granted of one trip off with no pay. Such special leave shall not be considered as a break in service for any purpose.

(e) The Companies shall contribute to the Plan an amount sufficient to pay the cost of benefits and administration of the Plan.

PMA: The following provisions are applicable to the HAWAIIAN FISHERMAN and HAWAIIAN CITIZEN only while they are operating on their present port time schedules.

Because of the present port time operating schedules of these two vessels, Radio Officers or Radio Electronic Officers employed on these two ships shall be covered by the following special provisions:

(1) During his period of continuous employment on one of these ships each Radio Officer or Radio Electronic Officer shall accrue four (4) additional days' wages for each thirty (30) days of his employment; plus a pro-rata for additional employment beyond thirty (30) days. Additional days of wages accrued, when in sufficient number to warrant a voyage off, may be used or may be accumulated until the next regular vacation of the Radio Officer or Radio Electronic Officer as provided in this section. At that time, such total or the remaining additional days as may have been accrued shall be considered as vacation, and paid to the employee as such.

(2) During the period of employment normal vacation benefits shall accrue but if time off is taken during the period of employment under (1) above such time shall not be counted as time worked for vacation benefit purposes.

(3) Employees who take a voyage off during their period of employment shall be eligible to return to the vessel after their voyage off and complete their normal period of employment.

(4) Voyage off time, as provided in subsection (1) hereof shall not be counted as time worked for vacation benefit purposes, but shall be counted as qualifying time for pension eligibility.

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1. Names of Radio Officers who accepted assignments during the week shall be moved from the Active to the Employed column at the same time.

2. Names of Radio Officers registered on the Assignment List as Active or Inactive who are being penalized under these rules shall be moved from the Active or the Inactive to the Employed column at the same number.

3. Names of Radio Officers registered on the Assignment List as Employed who have been penalized during the week for registration as Active or Inactive shall be moved from the Employed to the Active or Inactive column at the same number.

4. After the operations described in (1), (2), and (3) hereof have been completed, the names of Radio Officers in the Employed column of the List shall be moved to positions lower in shipping priority than their positions of the preceding week at a "rate of descent" determined by the National Council.

5. After operation described in (4) hereof has been completed, the names of Radio Officers registered on the List as Active or Inactive shall be moved to position of highest employment seniority. This shall be accomplished by moving these names to fill such numbered positions as have been left open by the movement described in (4) hereof.

6. The names of Radio Officers in the Employed column who shall, through operations (4) and (5) hereof be in higher numbered positions than any held by Radio Officers registered as Active or Inactive, shall be removed from the List. This rule may be modified by the National Council to limit the highest actual numbered position which may be occupied by a Radio Officer registered on the List as Employed.

7. The names of Radio Officers who have registered as Active or Inactive during the week, and who were not previously registered on the List during such week, shall be added to the Active or Inactive columns at the end of the List in numerical order according to the date and hour each Radio Officer registered. This provision shall not limit the right or prevent any Radio Officer who has registered as Active during the week prior to a compilation of the List and has not as yet been physically added to the List from being offered and accepting an assignment. If such Radio Officer shall have accepted an assignment before his name shall have been physically added to the List, his name shall not be added during the next compilation of the List.

STANDBY LIST

Rule 9. (a) The Union Employment Office shall maintain a list of Radio Officers who have temporarily left their assignment for reasons of sickness, vacation, layoff or for other valid reasons. This list shall be known as the Standby List.

(b) Any Radio Officer, so designating to a Branch Employment Office in writing, may be registered on the Standby List.

(c) Radio Officers registered on the Standby List shall not be eligible for assignment to any job other than the job which they are standing by subject to Rule 7 (7).

(d) All Radio Officers registering on the Standby List shall be designated as Employed and shall be subject to rules governing Employed Radio Officers.

(e) The Standby List shall be maintained separate and distinct from the Assignment List from which Radio Officers are selected for employment. The Standby List shall be posted in all Branch

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Employment Offices and shall contain the name of the Radio Officer, the job for which he is standing by, and the date he left the assignment.

(f) A Radio Officer registered on the Standby List for a period longer than three months or one round trip when a voyage exceeds three months shall request an extension of privilege of continuing to be registered as standby in writing addressed to a Branch Employment Office. Should a relief not be available for the Radio Officer to continue registered as Standby, the Radio Officer shall promptly return to his job or be considered as permanently leaving his assignment and shall register for Active or Inactive on the Assignment List. Radio Officers standing by vessels on "temporary laid-up" status shall not be required to renew Standby clearance in accordance with this section. Clearances issued to Radio Officers standing by vessels in this category shall so indicate.

(g) A Radio Officer employed on a scheduled voyage vessel who shall take leave from his assignment in accordance with this section shall return to his assignment at the Port where he left the vessel.

(h) A Radio Officer employed on other than a scheduled voyage vessel who shall take leave from his assignment, shall, if practicable, return to his assignment at the port where he left the vessel. If he shall return to the vessel at a port other than where he was relieved, he shall, if required, pay such transportation as is necessary to return his relief to the port of original assignment.

ALL RADIO OFFICERS TO HOLD CLEARANCES

Rule 10. (a) No Radio Officer shall accept any employment without official clearance from a

Branch Employment Office. The nearest Branch Employment Office of the Union shall be a central clearing bureau through which any of all arrangements in connection with shipping a ship under contract to the Union shall be made. The Radio Officer shall notify the Branch Employment Office immediately when any type of employment is contemplated or secured and shall obtain a clearance for such employment. The requirement for obtaining clearance to any employment shall apply whether such employment is Union or non-Union, afloat or ashore, where radio telegraph license is required as a condition of employment.

(b) All Radio Officers shall possess a valid Official Assignment Clearance showing their employment status at all times. No gaps between categories of Active, Inactive, or employed shall be permitted.

(c) Any Radio Officer who shall leave a vessel in any Port shall immediately apply to the nearest Branch Employment Office of the ARA to obtain an official clearance.

(d) No Radio Officer who is in arrears in dues and/or regular assessments or Employment Office fees as indicated in his membership book or records, shall be issued any clearance by a Branch Employment Office, except that a Radio Officer registered on the Assignment List as A may be issued a clearance to an assignment if amount in arrears shall not exceed the amount specifically provided by any decision of the National Council for unemployed Radio Officers. Any Radio Officer who shall have been issued clearance as provided in this section shall pay arrears upon completion of thirty days employment or one voyage.

(e) The Branch Employment Office shall forward to the office of the Secretary-Treasurer

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3. The official voting period in a special election shall be sixty (60) days, and all provisions of the Constitution which shall govern regular quadrennial elections shall apply to the special election except that time limits and specific dates shall be waived or modified for a special election. However, at least fifteen (15) days notice prior to the special election shall be given to members.

Section 10. Any challenge to the conduct of the election shall be made not later than thirty (30) days from the date of the count of the ballots; such challenge must be in writing and signed by the complaining member or members, and shall be sent by certified or registered mail to the National Council which shall hold hearings thereon and make its decision within thirty (30) days after the conclusion of the hearings. The decision of the National Council on challenges to the conduct of the election may be appealed to the following National Convention but shall be deemed final pending the appeal and shall remain in effect unless reversed by the National Convention.

Article VII REFERENDUM

Section 1. (a) A proposition may be submitted to referendum vote of the membership by:

1. The National Convention.
2. 2/3 vote of the National Council.

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3. A petition endorsing a proposition signed by fifty (50) members in good standing submitted to the Secretary-Treasurer. Once in every six (6) months, beginning October, 1949, the Secretary-Treasurer shall submit all such propositions to all Branch offices for concurrence or rejection by members voting at two consecutive membership meetings. Those propositions approved by 2/3 vote of all those members voting at such meetings shall be submitted to referendum within 30 days unless otherwise provided by the petition.

(b) All petitions shall indicate whether the petitioner desires an immediate referendum, or whether the proposition shall be submitted during a regular quadrennial election.

(c) All referenda submitted to the membership in conjunction with a regular election shall be conducted in accordance with the procedure outlined for such election. All other referenda may be conducted in accordance with the procedure outlined for special elections.

Article VIII TRIAL OF OFFICERS

Section 1. (a) Any Officer may be brought to trial on charges signed by one hundred (100) members in good standing over a period of sixty (60) days. The signed petition containing the charges shall be submitted to the Secretary-Treasurer who shall forward a copy

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p 21-26, 31-33

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to each member of the National Council for study. Should the charges be against the Secretary-Treasurer, the petition shall be submitted to the President.

(b) The National Council shall approve or disapprove the charges and shall submit their findings to one membership meeting at each Branch office for approval. If the membership rejects the charges, the action of the membership shall be final. If the charges are accepted by the membership, the officer charged shall then be suspended and removed from office.

(c) The National Council shall then elect three (3) members of the Council within fifteen (15) days to sit as a Trial Committee. Neither the accused officers nor any signer of the petition upon which the accused is being brought to trial shall be a member of the Trial Committee.

(d) The Trial Committee shall immediately notify the accused officer in writing of the date of trial and shall meet within fifteen (15) days after election to hold such trial.

(e) Within fifteen (15) days after the Trial Committee has been convened, the Committee shall submit its findings and recommendations to one (1) membership meeting at each Branch office. A majority of members voting at such Branch meetings shall determine whether the Trial Committee recommendations shall be submitted to thirty (30) day referendum. Should the membership vote against holding a referendum, the Trial Committee recommendations shall be final and binding; provided, however, that an appeal may be made to the next National Convention which shall have authority to review the case.

(f) If the charges against the Officer are dismissed and rejected by the membership, he shall be reinstated to his original office and all wages due him during his suspension shall be paid.

(g) An Officer removed from office and not expelled shall not be permitted to hold office in or be employed by the Union for a period of five (5) years after date of removal from office.

(h) The National Convention shall have the power to bring to trial and remove from office any officer of the Union or subdivision thereof. The charges shall be submitted to the President or Secretary-Treasurer in writing. No Officer shall be brought to trial unless he shall have been notified by registered mail of such charges at least three (3) weeks prior to the Convention.

Article IX

TRIAL OF MEMBERS

Section 1. (a) A charge against any member for violation of the Constitution and laws of the Union must be submitted in writing to the Council member in charge of a Branch office at the Branch where such violation took place.

(b) The Council member in charge of a Branch shall immediately send the member charged by registered mail a copy of the specific written charges against him.

(c) At the next membership meeting held at the Branch office, the membership shall ac-

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cept or reject the charges. If the charges are accepted by 2/3 vote, the meeting shall elect a Trial Committee of not less than three (3) members.

(d) The Trial Committee so elected shall set a date for trial within ten (10) days and shall immediately notify the accused member that the trial will be held.

(e) Within ten (10) days after the Trial Committee has convened it shall make known its findings and recommendation in writing to the accused. The recommendations of the Trial Committee shall be final; provided however that the accused member may file an appeal with the Trial Committee or the official in charge of the port within ten (10) days. Should such an appeal be filed, the Trial Committee findings and recommendations shall be forwarded to the Secretary-Treasurer who shall submit copies to all Branch offices where they shall be brought to the attention of the next Branch membership meeting. A majority of members voting at such Branch meetings shall determine whether the recommendations of the Trial Committee shall be accepted or rejected, which shall be reported to the Secretary-Treasurer within five (5) days after such Branch membership action. The Secretary-Treasurer shall then notify the accused in writing within the next five (5) days of such Branch membership action. Such decision of the membership shall be final, provided further however, that a member may appeal to the next Convention.

Section 2. Any member of the National Council shall have the right to prefer charges against any member. Such charges shall be submitted in writing to the Secretary-Treasurer who shall institute the procedure outlined in Section 1 at the Headquarters Branch office.

Section 3. No member who is at sea shall be brought to trial until he shall have returned to the United States.

Section 4. Any member whose license as a Radio Officer has been suspended or revoked by the U. S. Coast Guard or by any other Government Agency; or who has been denied by the U. S. Coast Guard or by any other Government Agency, a license or document necessary for employment as a Radio Officer; or who has been denied permission by the U. S. Coast Guard or by any other Government Agency, to ship by reason of his being a poor National Security risk; or who has been found guilty of a felony by a Court of Competent Jurisdiction, may be suspended and/or expelled from membership after due investigation and approval by the National Council subject to further approval by a majority of the members voting at Branch membership meetings held within fourteen (14) days after receipt of the National Council's decision. The decision of the membership shall be final; provided however, that an appeal may be taken to the next Convention.

Article X NEGOTIATIONS

Section 1. (a) The President shall be in charge of all negotiations. He may delegate the handling of such negotiations to any member of the National Council, or he may call upon any such member to assist in such negotiations.

(b) The membership at the Branch office where such negotiations take place shall have

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WITHDRAWAL

Section 2. (a) A member in good standing who shall accept employment outside the jurisdiction of this Union, or who shall retire, or be promoted to a position which shall make him ineligible to membership, shall be entitled to a withdrawal card from the Union, which shall be valid for three (3) years. A withdrawal member who shall have held a withdrawal card for a period of less than three (3) years and who shall apply for reinstatement within such period shall be required to pay, as a reinstatement fee, all dues and other financial obligations which he would have paid during such period, before such member shall be reinstated to membership in good standing. All those who have been on withdrawal for three (3) years or longer, shall re-enter the Union, subject to Section 3 of Article XII (as a new member) and he shall be required to meet all obligations set forth therein. All reinstatements shall be subject to approval of the National Council and a Branch membership meeting. All reinstated members shall be subject to such employment rules as may be promulgated by the Union.

(b) Anyone working on his license aboard a United States merchant marine vessel, or an ARA contract vessel as Radio Officer, whether such job be Union or non-Union, MSTTS or civilian, shall not be eligible for withdrawal and shall not be issued a withdrawal card.

MEMBERSHIP ELIGIBILITY

Section 3. (a) Any person who shall seek membership in this Union shall be required to

file with the Secretary-Treasurer an application for membership.

(b) An applicant for membership as a Marine Radio Officer shall be on probation, and shall not be accepted as a full book member until having worked under union clearance for a period of twelve (12) months. Such applicant for membership shall be issued a permit card upon assignment and shall pay one quarter's dues at that time, and shall pay all dues and assessments for that period of time actually employed under Union clearance until accepted as a full book member.

(c) The initiation fee for applicants for membership in the American Radio Association shall be two thousand dollars (\$2000). All initiation fees and dues must be fully paid before membership is granted.

(d) The National Council may waive the provisions of this section during an organizing drive.

(e) Before an applicant for membership shall be accepted into the Union he shall be first approved by the National Council, and shall take the following oath: "I solemnly swear to be true and loyal to the Union and the labor cause, and to put into practice the principles laid down in the Constitution and to obey all rules the Union may adopt."

DUES

Section 4. (a) The number of members registered on the Union rolls shall be computed at the end of each calendar quarter. Should the number of members registered on the Union's rolls be not more than 1050 nor less than 1000

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then the dues rate beginning with such quarter shall be fifty (\$50) dollars per quarter, plus the amount of dues required in accordance with (b) below. Should the number of members registered on the Union's rolls be not more than 999 nor less than 950, then the dues rate beginning with such quarter shall be increased five (\$5) dollars per quarter, plus the amount of dues required in accordance with (b) below. Similarly, for each subsequent decrease of 50 members, the dues shall be increased an additional five (\$5) dollars per quarter, for each 50 man-unit decrease, plus the amount of dues required in accordance with (b) below.

(b) Effective July 1, 1970, in addition to the amount required in accordance with (a) above, each member shall pay an amount equal to 6% of the gross amount of each vacation benefit payment he shall receive from any ARA Vacation Plan, or from the ARA, for work performed on or after June 16, 1970, as dues to the Union. Such payment shall be due and payable on the date he receives said vacation benefit, and may be paid by authorizing the deduction of each such 6% by the Plan for payment to the Union, or by direct payment by the member to the Union no later than the first day of the quarter next following the vacation benefit payment.

CONVENTION FUND

• Section 5. Eight dollars per year per member shall be taken from the General Fund and placed in the Convention Fund. This is to be done at the conclusion of the third quarter of each year.

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STRIKE & FIGHTING FUND

Section 6. An annual Strike and Fighting Fund payment of Forty (40) dollars per year shall be payable by each member during the first quarter of each year beginning with the year 1957.

ASSESSMENTS

Section 7. No assessments shall be levied without approval of such assessments by a majority of the members who shall cast votes in a National referendum.

MISCELLANEOUS

Article XIII

Section 1. STAMP SYSTEM: The National Union and its subdivisions shall use the "stamp system" for the collection of all funds which shall be derived from such initiation fees, dues and assessments as shall be levied by the general membership.

Section 2. CONTRACTS AND LIABILITIES: No official, member, or committee shall make any contract which shall involve a financial obligation, or incur any liability in the name of or in behalf of the National Union, unless written permission to make such contract, or to incur such liability first shall have been obtained by majority vote of the National Council.

Section 3. STRIKE: The National Council shall prepare and coordinate all rules and regulations for the conduct of any strike. All strike committees shall be guided by such rules and regulations.

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EXHIBIT B- LETTER DATED JANUARY 13, 1971 AMERICAN RADIO ASSOCIATION
TO MR. PELTZMAN

American Radio Association

270 Madison Avenue • New York, N. Y. 10016 • MUrray Hill 9-5754 • Cable Address: ARADIOCIO NEWYORK

W. R. STEINBERG
President
PHILIP A. O'ROURKE
Vice-President
BERNARD L. SMITH
Sec'y-Treas.

NATIONAL COUNCIL

JOSEPH Y. RUDIN
TED BERMAN
HARVEY STRICHARTZ
RALPH DAIRD
FLOYD HEFTING

January 13, 1971

Mr. Archie Peltzman
185 Wortman Avenue
Brooklyn, N. Y. 11207

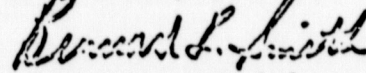
Dear Sir:

Please be advised that pursuant to Section 4 (b) of the Collective Bargaining Agreement entered into between the American Radio Association, AFL-CIO and the Central Gulf Steamship Co., you are required as a condition of employment to become a member in good standing of this Organization.

Accordingly, within thirty (30) days from the date hereof, you are required to tender the sum of Two Thousand Dollars (\$2,000.00), (together with arrears of all dues and fees, if any,) as the initiation fee required for acquiring Union Membership.

If such payment is not made, we shall have no alternative than to request your immediate discharge by the Company.

Very truly yours,



Bernard L. Smith
Secretary-Treasurer

BLS:LB

Via REGISTERED R.R.R.

cc: SS GREEN RIDGE, % Wilmington Shipping Co.
P.O. Box 1809, Wilmington, N.C. 28401 (AIR MAIL, REG. R.R.R.)

cc: Central Gulf S.S. Co., New Orleans, La.

SAN FRANCISCO

BALTIMORE

NEW ORLEANS

SEATTLE

HOUSTON

170

COPY OF MEMBERSHIP BOOK DATED MAY 26, 1944 AND SHOWING DUES PAYMENTS MAY 10, 1949

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EXHIBIT D- LETTER TO AMERICAN MERCHANT MARINE INSTITUTE REQUESTING ASSISTANCE

A. Peltzman
185 Westman Ave
Bklyn 11207
N.Y.C.

Secretary of Appeals Board
American Merchant Marine Institute
Dear Sir,

ExD I am filing this complaint, because the A. R. A. refuses to put my name on the Group 2 list & because they insist they will not do so unless I pay an initiation fee of \$2,000 in order to become a member.

My position is that I am a member, (see enclosed documents National Book No 5049 of American Communications Association & Book No 284 of American Radio Assn.)

Also official Assignment Slip date 3/17/59. I returned to sea after being illegally deprived of my license by the Coast Guard. I have sailed on three voyages as a permit card member from Group 2 (see document).

My position is that in effect I was illegally deprived of my license & since that suspension was removed, my membership automatically becomes active again. Even if 17 years have elapsed, since I have already made 3 voyages from Group 2 list, or more than one year & 6 months since I started sailing again in Dec of 1967.

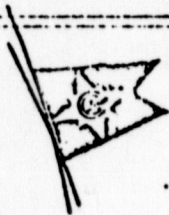
Please advise me of your decision on this matter.

Sincerely,
A. Peltzman

EXHIBIT A- LETTER DATED MAY 28, 1971 CENTRAL GULF STEAMSHIP CORP. TO
MR. PELTZMAN

CENTRAL GULF STEAMSHIP CORPORATION

TELEPHONE 529-5481
TELEX 050-7435
TWX 810-951-6044



CABLE ADDRESS
CENTRASHIP

*International Trade Mart - P.O. Box 58305
No. 2 Canal Street
New Orleans, La., U.S.A. 70150*

S.S. Green Ridge
New York N.Y.
May 28, 1971

Mr. Archie Peltzman
Radio Officer

Dear Mr. Peltzman:

In accordance with your request I have ordered a replacement. Please be advised that you will not be able to rejoin the vessel without proper clearance from the Union.

Yours truly

W.C. Kenopke
W.C. KENOPKE, MASTER
S.S. GREEN RIDGE

102 A 106

EXHIBIT-LETTER DATED SEPTEMBER 1, 1971 - CENTRAL GULF STEAMSHIP CORP. TO
MR. PELTZMAN
CENTRAL GULF STEAMSHIP CORPORATION

TELEPHONE 529-5461
TELEX 050-7475
TWX 810-951-0044

CABLE ADDRESS
CENTRASHIP

International Trade Mart

No. 2 Canal Street

New Orleans, La., U.S.A. 70130

September 1, 1971

Mr. Archie Peltzman
8725 16th Avenue
Brooklyn, New York 11214

Dear Mr. Peltzman:

This is in reply to your letter of August 17, 1971 requesting correspondence between this office and the A.R.A. in connection with your removal by the Union, from our SS Green Ridge.

We have never corresponded with the Union concerning your case. The New Orleans A.R.A. agent telephoned the writer to ascertain the itinerary of the vessel, a few days prior her arrival Bayonne.

After the vessel arrived Bayonne, A.R.A., New York informed the writer telephonically that you would have to be replaced until some details of your standing with the Union were resolved.

As it was clearly a parochial problem the writer did not inquire of reasons and circumstances surrounding the case, but to avoid our becoming involved in a breach of our contract with A.R.A., the Master was instructed not to sign you on until you produced a clearance from the Union.

Due to our not having any correspondence with the A.R.A., we were under the erroneous impression a relief man had been assigned to the Green Ridge while your differences with the Union were being resolved, thus the reason for our routine wire notice to rejoin.

As you no doubt know, our contract with the A.R.A. prohibits our selecting or employing Radio Officers, they are assigned by the A.R.A. in accordance with their shipping rules.

CEW:dh
cc: Mr. G.A. Atkinson, N.Y.

Yours very truly,
CENTRAL GULF STEAMSHIP CORPORATION

C. E. Whitehead
Captain C. E. Whitehead
Manager Marine Personnel

A107

LORENZ, FINN, GIARDINO & LAMBOS

21 WEST STREET

NEW YORK, N.Y. 10006

CABLE ADDRESS
RENZLO

TELEPHONE
943-2470

December 6, 1973

Honorable Whitman Knapp
United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York

Re: Archie Peltzman v. Central Gulf Lines, Inc.
73 Civ. 2911 WK

Dear Judge Knapp:

In accordance with a telephone conversation with your law clerk, this is to confirm that at the request of the Court the return date for the Motion for Summary Judgment in the above matter has been rescheduled for December 21st at 2:00 P.M.

Plaintiff is being notified of this change by copy of this letter.

Defendant will submit a brief in support of the Motion on or before the return date.

LORENZ, FINN, GIARDINO & LAMBOS

By _____
James A. Flynn

Attorneys for Defendant,
Central Gulf Lines, Inc.

cc: ~~Mr. Archie Peltzman~~
8725 - 16th Avenue
✓ Brooklyn, N.Y. 11214

7108

LORENZ, FINN, GIARDINO & LAMBOS

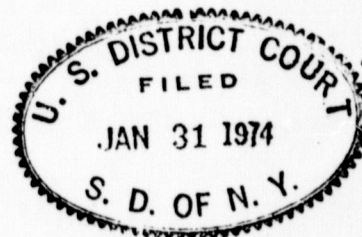
21 WEST STREET

NEW YORK, N.Y. 10006

CABLE ADDRESS
RENZLO

TELEPHONE
943-2470

December 4, 1973



Honorable Whitman Knapp
United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York

Re: Archie Peltzman v. Central Gulf Lines, Inc.
73 Civ. 2911 WK

Dear Judge Knapp:

This will confirm a conversation between Mr. Constantini, of our office, with your clerk on November 27, 1973.

We have just received another Motion for Discovery from Mr. Peltzman, returnable on Tuesday, December 11, 1973 at 9:00 A.M., which is not your usual return date. Mr. Constantini was advised to disregard the motion until such time as we receive notice from your office.

Mr. Peltzman has twice previously made Motions for Discovery - each time requesting the same material. On each occasion we informed him which material requested was in our possession and that if he would call for an appointment, it would be made available to him. He has never made the requested appointment. We have each time also filed a response to his requests.

On Tuesday, November 27, 1973 - the same day that Mr. Constantini spoke to your clerk and the same day that we received Mr. Peltzman's latest Motion for Discovery - we filed a Notice of Motion for Summary Judgment. Hearing has been set for Friday, ~~January 25~~ 25, 1974 at 2:00 P.M. If the Court grants our motion, Mr. Peltzman's request for discovery will become moot.

Dec. 14/73
3/21

A109

LORENZ, FINN, GIARDINO & LAMBOS

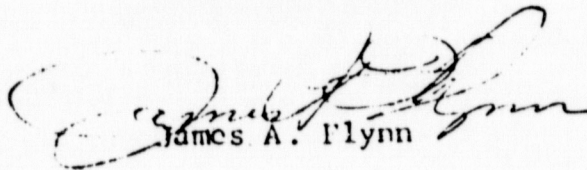
Honorable Whitman Knapp

- 2 -

In view of the fact that we do not wish to burden the Court with needless, repetitious papers, we would greatly appreciate the Court's direction as to whether or not we should respond to Mr. Peltzman's latest motion prior to January 25th.

Thank you for your kind consideration.

Very truly yours,


James A. Flynn

JAF/wf

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

A110

September 12, 1973

The Honorable Whitman Knapp
United States District Court
For The Southern District of New York
1 Federal Plaza
New York, New York

Re: 73-CIV-2911 -- Archie Peltzman v. Central Gulf Steamship Co.
(Southern District of New York)
Board Case Nos. 2-CA-12445, 2-CB-5033,
2-CB-4788

Dear Judge Knapp:

Enclosed please find an original and two copies of a Motion to Quash filed in response to a subpoena issued on behalf of Archie Peltzman directing Sidney Danielson, Regional Director for the Second Region of the National Labor Relations Board, to appear and to produce documents in the above captioned case at a hearing scheduled on September 14, 1973. We have been advised by your office, however, that the hearing was scheduled to consider plaintiff's motion to strike defendant's answer. It would appear, therefore, that the return date on the subpoena should be postponed, and that the enclosed motion to quash considered at a later date. However, unless so notified by the Court, Board counsel will appear at the scheduled hearing.

Very truly yours,

Elliott Moore
Assistant General Counsel

By

Glen M. Bendixsen
GLEN M. BENDIXSEN
Chief of Special Litigation
1717 Pennsylvania Ave., N.W.
Washington, D.C. 20570
Telephone: (202) 254-9221

Enclosures

Winifred D. Morio, Regional Attorney
Region 2, N.L.R.B.
26 Federal Plaza
New York, New York
Telephone: (212) 264-0332

led

23

3. These files contain witness statements, documents obtained from witnesses, notes and other memoranda made by Board agents in the preparation of the case and other investigative material, and are

A111

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ARCHIE PELTZMAN,

PLAINTIFF

-against-

CENTRAL GULF STEAMSHIP CO.

DEFENDANT

X

"

73 Civ 2911 WK

"

CROSS-MOTION

"

FOR PARTIAL SUMMARY

"

JUDGMENT (Rule 56) &
affidavit in support

X

Archie Peltzman, the plaintiff in this action, ~~on~~ pro se makes the following affirmation:

1. That he is personally familiar with the facts in this action.
2. This affidavit is submitted in support of plaintiff's motion opposing summary judgment & in support of plaintiff's Cross-Motion for partial summary judgment.
3. Plaintiff believes that the cross-motion should be granted on the grounds that there is no genuine issue as to the material fact of plaintiffs illegal discharge contrary to the Maritime Law and the applicable statutes therein.
4. That his pleadings in this case up to the present time are true and supported by documents. Where there is no documentary report plaintiff affirms the truth by personal knowledge. The inability of plaintiff to furnish other documentary support is due to the defendants tactics in refusing to move the case along ~~and~~ according to the applicable rules of this Court.
5. That the pleadings show that there was no just cause for discharging plaintiff and refusing to rehire him.

6. That the contract relied on by the defendant is invalid in that it is a closed shop contract and the hiring-hall procedures are illegal under the Landrum-Griffin Act and violates the rights of seamen in the industry.

7. That the pleadings show that the defendant discriminated and coerced the plaintiff in his rights of hire and tenure of employment, in order to encourage union membership, on the basis of an invalid union security contract.

8. It is, therefore, respectfully requested that the plaintiffs cross-motion be granted and defendants motion for summary judgment be denied.

Archie Peltzman
Plaintiff Pro Se
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Brooklyn, N.Y.C. 11214
Ph. 256-4658

TO: Lorenz, Finn, Giardino & Lambos
Defendant's Attorneys
21 West Street
N.Y.C. 10006

Sworn to before me this 18th day
of December 1973

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A. 113

-----X
ARCHIE PELTZMAN, " Civ No 73-2911
PLAINTIFF, " Pleadings in opposition to
-against- " motion for summary judgment.
CENTRAL GULF STEAMSHIP CO. " (Rule 56)
DEFENDANT. "
-----X

1. The plaintiff Archie Peltzman, pro se, makes the following affirmation.
2. He has read the Ex. A of defendant and wishes to correct and add to that exhibit certain pages omitted therein and to make the following observations.
3. On p 66 of the defendants Ex. A after the word ensuing va-is inserted the following (f) unless and until and (this part of p 66 is not in the contract). What actually follows is in plaintiff's notice of motion for order compelling discovery material, and deposition affidavits, and for stipulation regarding genuineness of documents. As part of plaintiff's exhibit of National agreement with Steamship Co. p 18-23, 25-27, 39-42, 65-67.
4. On p 66 - ensuing vacation benefits.
 - (d) Radio officers and Radio Electronic Officers on passenger ships shall have the right after six months of continuous employment to have a special leave of absence granted of one trip off with no pay. Such special leave shall not be considered as a break in service for any purpose.
 - (e) The companies shall contribute to the plan an amount sufficient to pay the cost of benefits and administration of the plan.
5. In defendants Ex. A pages 37-65 are not included. But see plaintiff's attached papers of National Agreement. On p 65 the middle of the page reads Vacation Plan. Sec 30 (a) The agreement and declaration of trust establishing the ARA, and ARAPMA Vacation Plan, is extended through June 15, 1972.
 - (b) (Then follows details of plan continuing till p 66).
6. On p 39 to 42 of plaintiff's attached papers is outlined the grievance procedure of the contract. See especially,
 - (b) Any Radio Officer and/or Radio Electronic Officer who feels that he has been unjustly treated or discharged, or has been subject to unfair consideration shall endeavour to have such grievances adjusted according to the following procedure:

1. Presentation of the complaint to the Master of the vessel.
2. Appeal to the shore representative of the Company.
3. A joint hearing before the local representative of the union and the Company...

In the event...

7. Plaintiff argues that the omission of the Vacation Plan on p 65 and the deletion of p 66 at the bottom of the page and substituting a typed paragraph, plus the omission of the pages 39-42 containing the grievance procedures of the contract is a wilful omission on the part of the defendant in order to deceive the Court, and withhold pertinent and specific parts of the Contract relevant to the issue being litigated.
8. Plaintiff rebuts defendants statement, pursuant to Rule 9 (g) with the following arguments.
9. Re par 1; Plaintiff asserts and will cite cases in his memorandum of law that the contract relied on by defendant is an illegal closed shop contract and therefore will not be enforced by the Courts.
10. Re par 2, same argument as 9.
11. Re par 3, Plaintiff agrees.
12. Re par 4, this is a hearsay statement, and defendant in his letter to plaintiff writes that he never had any written communication with the union. (See Sept. 1, 1971 letter from Capt. Whitcomb to plaintiff), attached to plaintiffs Notice of Motion to require deponent to permit inspection and copying of papers. Plaintiff argues that counsel in an action should not offer himself as a witness by way of an affidavit on a motion for summary judgment. (Welcher V United States 18 FR Serv 12b, 34 Case 2 (1953)).
13. Re par 5, 6, 7, 8, Plaintiff rebuts the statements that he did not use the grievance procedure. In previous talks with the union officials and with Mr. Benson of The American Merchant Institute who had tried to arbitrate the first grievance plaintiff had with the union. Mr. Benson was unable to accomplish anything and plaintiff had to complain to the NLRB about the unfair hiring hall practices of the union. When he received the discharge notice and before he sued the union he telephoned Mr. Benson who was the representative of the shipping Companies and asked if he could help him. Later on Mr. Benson was asked to help plaintiff by giving him correspondence from the union and the gist of talks with union officials. He declined to help me and told me it was on advise of counsel

14. Plaintiff knew better than to ask the union officials for help, since they were the cause of his difficulties with the company and had previously refused to even give him the address of the American Merchant Institute, or the phone number or the officials name to contact so that the letter plaintiff sent to the institute did not have anyones name attached to it. This letter was never answered and plaintiff had to go to the institute and seek out someone there to help him. All to no avail. (Letter attached to Notice of Motion for order compelling discovery material and deposition affidavits, and for stipulation regarding genuineness of documents).

15. Re par 9, 10, See Ruzicka V General Motors, 333 F Supp 824 (1972) pleaded in Motion to Strike. Also see Expertise, the NLRB, the Constitution, things abused and things forgotten - Sylvester Petro, Wayne Law Rev Vol 14, 1126 (1968) p 1141 - Johnson V Grand Rapids Bldg Trades Council 33 CCH Lab Cas nr 70,996 Mich Cir Ct 1957, revrd 357 Mich 1, 97 N W 63, 1959 (federal preemption). The plaintiff sought relief in State Ct after NLRB had refused to entertain changes. Granting The relief sought, Smith J said, "If the Courts are without jurisdiction here these parties are without legal process of any kind"... Such a situation should be abhorred in a constitutional atmosphere guaranteeing due process, equal protection justice for all... It seems clear that Congress has no power to deny due process or any process in exercising its power in Commerce.

16. Rebutting defendants arguments for summary judgment pursuant to Rule 56, - Plaintiff makes the following arguments.

17. Summary judgment will not be granted ^{on} hearsay in the supporting and opposing affidavits. (Boerner V United States IFR, Serv 56 c 12, Case 1, 26 FS 769.

18. Affidavits on a motion for summary judgment must be made on personal knowledge, set forth facts admissable in evidence, and show that the affiant is competent to testify to the matters stated. For failure to comply with these requirements, an affidavit may be stricken in whole or in part, and the time to make such a motion is not governed by Rule 12 f. However, the objecting party must state which portions of the affidavit he objects to. (Ernest Seidelman Corp V Mollison 14 FR Serv 56 e 1 Case 4, 10 FRD 426 (1950)).

19. Plaintiff argues that the affidavit of counsel is deficient in that he relies on the legality of the contract. Plaintiff will show by citing ~~b~~ cases against the A.R.A. of rulings by the NLRB and the Courts that the contract is illegal due to its preferential hiring hall and closed shop clauses. In effect no one can be hired without a clearance from the union whether he is a member, permit card member or non-member.

20. Plaintiff rebuts defendants arguments that the NLRB has sole jurisdiction by citing these cases, all of them to the effect that NLRB is not the sole arbiter of unfair complaints. 303 FS 1377 - concurrent jurisdiction. NLRB unfair complaint and violation of collective bargaining contract. 382 F2 773-NLRB Not preempting rights of employee.

344 F2 107-concurrent jurisdiction NLRB.

303 FS 1377-complainant discharged without just cause, violation of contract, lack of good faith, improper motive, or discrimination is essential element to be alleged by member against his union.

380 F2 69 cert den 389 US 1059 - Refusal of Board to issue unfair labor practice complaint did not constitute adjudication for purposes of applying doctrine of res judicata in subsequent Court Action under this section governing suits by & against labor organizations.

NLRB decision not res judicata - 343 FS 480, 336 FS 824, 334 FS 242, 323 FS 1181, 407 F2 253, Cert den 395 US 904

See Smith V Kingsport Press - 233 FS 643 - A paid vacation contemplates, continuance of employment.

21. Plaintiff argues that the basic issue is did the employer by telling the plaintiff he had to get a clearance from the union discriminate against him to encourage membership in a labor organization.

Did he also violate the Maritime laws by discharging plaintiff wrongfully without just cause? Plaintiff argues that he did and will show in his memorandum of law the cases that prove the union has been violating the Taft-Hartley hiring hall restrictions since the first illegal contract in 1948. The Maritime laws preclude anyone from demanding money from a seamen for providing him with employment.

22. Plaintiff argues that he is a member of the union because the applicable statute title 29 Us CA Sec 412, 29 USCA Sec 402 says:

Members or members in good standing when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization and who neither has voluntarily withdrawn from membership nor has been expelled from membership after appropriate proceedings of the Constitution and by laws of such organization.

23. From the Universal Declaration of Human Rights Article 20

(1). Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

24. Plaintiff contends that the union constitutional is illegal, p 29 Article XII (C) is illegal- Calls for automatic expulsion for non payment of dues without notice or hearing. p 32 (e) Oath which plaintiff objects to believes is illegal.

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p 32 (a) trial of Officers on charges must be signed by 100 members as contrasted with expulsion of plaintiff from union in 1950 without notice or hearing. Plaintiff argues that this is not due process or equal treatment under the law, but arbitrary and illegal action.

p 26 Sec 4 - relating to expulsion of members whose license is revoked by Coast Guard. This section not followed by union in plaintiff's case.

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MEMORANDUM OF LAW

1. US Bulk Carriers V Arguelles 27 Led 2d 456 -

Seamen's suit for wages under 46 USC Sec 596 held not precluded by his failure to take advantage of Sec 301 of Labor Management Relations Act providing for enforcement of grievance and arbitration provisions of collective bargaining agreements.

2. National Labor Relations Board V Isthmian SS Co., National Maritime Union of America, Intervenor - 126 Fd 601.

An employers preferential hiring agreement with union requiring employer to give preference to union members on filling vacancies, did not justify creation of vacancies to be filled by discharging employees who were members of rival union, and bound the employer only when vacancies lawfully occurred. National Labor Relations Act Sec 1 et seq.

3. National Labor Relations Board V Waterman Steamship Co., 309 US 206, - South Atlantic Steamship Co., V National Labor Relations 116 F2 480 - Southern Steamship Co., V National Labor Relations 120 F2 505-

Requirement for reinstatement is proper. (Cases quoted in Isthmian SS Case).

4. In Waterman Case on p 708 - 84 Led 708, note 5...

Only the discharge of Pelletier is claimed by the Company to have been due to incompetency. The Court below held that O'Connor had taken a vacation and was not discharged, and was thus entitled to vacation pay and reinstatement. The board ordered that O'Connor be made whole "for any loss of pay" suffered as a result of the companys acts which the Board found had been discriminatory.

5. Chavez V Sargent - 339 p 2d 801, 52 C 2d 162.

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A "closed shop" is an establishment in which the employer by agreement hires and retains in employment only union members in good standing, except that, by some agreements when union members are unavailable the employer may hire non union workers provided they apply for union membership, or obtain work permits before beginning work.

6. NLRB V H.K. Ferguson, 337 Fd 205,208

Agreement as found by the Board, between employer and union with reference to securing employees through business agent who operated hiring hall exclusively, as agent ~~was~~ for parties created a "closed shop" condition is area encouraging membership in local unions so as to be violative of statute.

7. Minor V Building & Construction Trades Council, 750 N.W. 2d 139, 147.

A "Closed Shop" is one where only union members may be hired.

8. Gooden V Sinclair Refining Co., 378 F2d 576.

Seamen are not and should not be restricted as to where they may look for satisfaction of ~~their~~ thier rights.

9. Underwood V Isbrandsten Co., 100 FS 863.

In suit by libellant for unlawful and wrongful discharge as chief engineer of vessel chartered by respondent and to recover for non payment of wages and subsistence from date of discharge to date when libellant obtained other employment, evidence established that libellant was not discharged by reason of incompetency and that he was entitled to wages and subsistence until time he obtained employment.

10. Radio Officers Union of Commercial Telegraphers Union, AFL V NLRB 347 US 17 -

For purposes of National Labor Relations Act section making it unfair labor practice for an employer by discrimination in regard to hire etc., to encourage or to discourage "membership" in any labor organization, quoted word is not restricted to "adhesion to membership" that is, joining or remaining on unions membership roster, but includes as well obligations of membership, that is, being a good union member.

11. Pile Drivers Union Local 2375, United Brotherhood of Carpenters & Joiners of America, AFL-CIO & Frank Thomas Dennison, Jr
192 NLRB No. 21-CB - 3730, CCH nr 23, 301. July 21, 1971.

Preferential Hiring - Fact Finding Hiring Halls.

On the facts, a union acted unlawfully by denying referral from its hiring hall to an individual ^{WHC} had failed to pay the union initiation fee, Section 8 (b) (1) (A) & (2) - Back reference nr 4520.761.

12. The following ~~seven~~ ^{SIX} cases show that the previous decisions against the American Radio Association by the NLRB have not stopped that union from continuing its unfair labor practices against the plaintiff, and the illegal contract signed in 1949 still has the same clauses in it that was declared illegal then, therefore, the contract is still invalid because in effect and actual practice it is a closed shop practice, clearly illegal under the Taft-Hartley Act, but semantically called a union-security clause in the contract. The hiring hall procedures are still discriminatory vis a vis non-members permit card members, and the employer has to apply to the union for manning his ships and has no right to hire or rehire without a "clearance" from the union.

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(1). In the matter of American Radio Association Affiliated WITH The C.I.O. & Carl W. Lundquist & William, Steinberg, Case No. 2-CB-88 decided April 19, 1949: 82 NLRB 1344, No 151

Relating to a "closed shop" agreement and to a strike by the A.R.A. to force employers to sign such an agreement. The decree was consented to by American Radio Association in Docket No 21791 US Ct of Appeals 2nd Circuit, Dec. 28, 1950.

(2) A decree consented to by the A.R.A. Docket nr 24737, filed July 19, 1957; National Labor Relations Board V American Radio Assn.

The decree in its entirety and the partial stipulation, plus authenticated docket sheets of both cases will be attached as Ex 1. It clearly shows the unfair practices of the union. The 1950 case is printed in the volumes of the Ct of Appeals but the 1957 case was not printed so plaintiff did not have the facts of this case until last week. The Ex 1 shows that the complaints filed were by the Secy-Treasurer of the Radio Officers Union of the Commercial Telegraphers Union. Three years previously this same union had themselves been adjudged guilty of violating members right in the case cited as Radio Officers Union V NLRB 347 US 17 (1954).

(3) In the matter of Pacific Maritime Association, successor in interest to Pacific American Shipowners and its member Companies & Radio Officers Union Marine Division Commercial Telegraphers Union AFL-CIO, case No 20-CA-166 - decided April 28, 1950, 89 NLRB No 115.

In this case the American Radio Association intervened. Board ruled that contract signed after a strike contained illegal hiring-hall procedures and closed-shop agreement.

(4) American Radio Association (Pacific Maritime Assoc.) Jack Hajim Case no. 20-CB-395 April 9, 1957, 117 NLRB No 151

Trial examiner ruled union was engaging in unfair labor practice but the Board ruled to dismiss the complaint because it was filed six months after the illegal unfair practices were committed.

(note contains Senator Taft's statement about discriminatory hiring halls)

(5) NLRB V Alaska SS Co. et al (A.R.A.) 221 F2d 357, Feb. 26, 1954.

Petition for enforcement for illegally participating in hiring arrangements for preferential treatment to union members. (Granted)

(6) NLRB V Alaska SS Co et al, A.R.A., 245 F2d 282 May 22, 1957

Enforcement of back pay order (granted)

13. The plaintiff in closing his Memorandum of Law will refute the defendants four cases cited in support of their motion for summary judgment.

(1) The Peltzman V ARA case cited is not over yet. Plaintiff has no intention of letting this union deprive him of his constitutional right to work.

(2) The Vaca V Sepes case cited has been refuted by plaintiff's efforts to have his complaints arbitrated. As his pleadings show; All to no avail.

(3) The Garmon case is not appropriate to this issue here being litigated. Seamen can sue in civil or common law and also in Admiralty. They are not restricted (see Gooden V Sinclair Refining Co (supra); also US Bulk Carriers V Arguelles (supra)

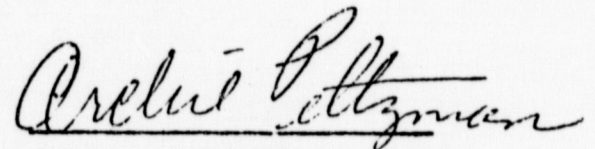
(4) The Lockridge case does not apply because Lockridge was not a seaman, he had not left his union involuntarily, and he did receive notice of his delinquency in dues, whereas plaintiff has the protection of the Merchant Marine Act.

This Act protects seaman from the union checkoff on dues and prevents anyone from demanding payment from a seaman for providing him with employment and other protection not available to land employees. Also the four dissenting opinions held that Gonzales should have been applied where the member seeks reinstatement, he can sue in State Court. Plaintiff's argument in his state case was that he also was seeking reinstatement and in this connection Judge Bloom in his opinion dismissing for lack of jurisdiction did not cite one seaman's case, neither did he cite the Constitution of the United States whose protection of unenumerated rights in the ninth amendment plus the 1st, 5th and 9th amendments, and the 14th amendment were designed to protect citizens in every conceivable right that a free society gives equally to their citizens and to their efforts to ensure happiness for themselves and their families. In this connection see Ex 2, syllabus of Edwards V Society of Graphical & Allied Trades (1968 E No 954) especially (4) Per Lord Denning M.R. & Sachs L.J.) That those provisions of rule 18 (4) which gave the union an unfettered right capriciously and arbitrarily to withdraw temporary membership without regard to the rules of natural justice were invalid because (per Lord Denning M.R.) such rules are an interference with a man's right to work which the law will protect, (per Sachs L.J.) are ultra vires and an unlawful restraint of trade, a fortiori in an industry where trade union membership is a prerequisite for employment (post, pp 377a-c, 382 B-383 B)

Wherefore, for the reasons set forth in these pleadings in opposition to the defendant's motion for summary judgment and in previous pleadings in this action supporting plaintiff's complaint. It is respectfully requested that the plaintiff be granted a declaratory judgment that his discharge was wrongful, and that the defendant's be ordered to cease their dilatory tactics,

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so that this case can move along to a decision on the other claims of plaintiff as to a closed shop and his claim for injunctive relief, and his claim for damages suffered by the actions of the defendant.



Archie Peltzman Pro Se

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MISCELLANEOUS^E AUTHORITIES

1. Norris - The Law of Seamen - Sec 370, p 390, Improper Discharge
2. Ralph A. Newman - The Closed Union & the Right To Work -
Columbia Law Review Vol 43-1943, p 44-45
3. Sylvester Petro - Expertise, The NLRB, & the Constitution:
Things abused and things forgotten - Wayne Law Review Vol 14 p 1128
4. The Role of The Law in the U.S. & England in protecting the
worker from discharge and discrimination - Herman Miles Ley (1969)
International & Comparative Law Quarterly - Vol 18 July 1969 p 577
5. Guidebook to Labor Relations - Labor Law Reports-CCH 1972 p 230
6. Understanding Labor Relations-George Rose-Bobbs Merril 1962
p 192.
7. The Taft-Hartley Act & Union Control of Hiring - A Critical
Examination - Jerome D. Fenton- Villanova Law Review Vol 4 p 341
8. Words & Phrases - Permanent & Supplement Edition Closed Shop
9. Clyde Summers - Union Powers & Workers Rights - The Law &
Labor Management Relations 1950 - University of Michigan Law School
10. Crime Without Punishment - Senator McClellan
11. Congressional Quarterly Vol 1 & 2 - Labor Relations p 588 -
Maritime Hiring Halls

Rec'd copies of Joint Appendix
and Appellant's Brief.

2/57/74

J. A. Shuman
Atty for Defendant

